

Wisconsin Administrative Register

No. 613



Publication Date: January 31, 2007

Effective Date: February 1, 2007



Revisor of Statutes Bureau
<http://www.legis.state.wi.us/rsb/code.htm>

The 2005 – 06 Wisconsin Statutes and Annotations are now available in bound volumes or on the *WisLaw*[®] CD-ROM

Bound Volumes:

Prices for the 2005 – 06 Wisconsin Statutes and Annotations bound volumes are detailed below.
Any sales tax due must be added to these prices:

Hard Cover	Hard Cover	Soft Cover	Soft Cover
<u>With Postage</u>	<u>Without Postage</u>	<u>With Postage</u>	<u>Without Postage</u>
\$159.00	\$151.00	\$140.00	\$133.00

Send orders to the Document Sales and Distribution Section at the address below or call (608) 266–3358. Unless exempt by law, all sales are subject to 5% state sales tax and, where applicable, 0.5% county sales tax and 0.1% stadium tax. Prepayment is required for all orders. Payments by check, money order, or credit card should be made payable to WI Department of Administration. Credit card orders using either VISA or MasterCard may be placed by calling (800) 362–7253 or (608) 264–9419.

WisLaw[®] CD-ROM:

Up-to-date *WisLaw*[®] CD-ROMs are released quarterly by the Revisor of Statutes Bureau. *WisLaw*[®] contains:

- Wisconsin Statutes and Annotations with Index
- Table of Cross-References and Table of Sections Affected by Acts
- Wisconsin Administrative Code with Index, Administrative Register, and Emergency Rules
- Executive Orders
- Wisconsin Acts with Index
- Supreme Court Rules and Internal Operating Procedures
- Recent Opinions of the Attorney General with Index
- Wisconsin Constitution with Annotations and Index
- U.S. Constitution
- Wisconsin Town Law Forms
- Wisconsin Code of Military Justice

All of the above *WisLaw*[®] Infobases are substantially integrated with hypertext links. The statutes now feature thousands of links between administrative rules and their authorizing statutes. State agencies are using *WisLaw*[®] for their legal research. *WisLaw*[®] is distributed by the Document Sales and Distribution Section to state agencies that submit a complimentary annual subscription form.

WisLaw[®] is available only by annual subscription. *WisLaw*[®] End-user license and subscription order forms are available at Document Sales or at <http://www.legis.state.wi.us/rsb>. CDs will be delivered only upon receipt of a signed license and subscription form and full payment. An annual subscription plus a license for no more than one simultaneous user costs \$99. Licenses for no more than 4 simultaneous users or for no more than 10 simultaneous users cost \$149 or \$199, respectively. Shipping is included. Unless exempt by law, all sales are subject to 5% state sales tax and, where applicable, 0.5% county sales tax and 0.1% Wisconsin stadium sales tax.

Orders by FAX will **not** be accepted; call (608) 266–3358 or TTY (608) 264–8499 or write to:

The State of Wisconsin
Department of Administration
Bureau of Document Services
Document Sales and Distribution Section
P.O. Box 7840
Madison, WI 53707–7840

Table of contents

Emergency rules now in effect.**Pages 4 to 7**

Agriculture, Trade and Consumer Protection:

Rules relating to minimum acreage requirements for farm-raised deer hunting preserves.

Rules adopted creating **ch. ATCP 112**, relating to credit report security freezes. **[First Appearance]**

Dentistry Examining Board:

Rules relating to the different levels of anesthesia, including nitrous oxide, anxiolysis, conscious sedation-enteral, conscious sedation-parenteral, deep sedation, and general anesthesia, and the requirements for each level.

Financial Institutions – Banking:

Rules relating to pawnbrokers.

Insurance:

Rules relating to preferred provider plan applicability dates and affecting small business plan limited exemption.

Rules relating to underinsured and uninsured motorist coverage in umbrella and commercial policies.

Natural Resources:

Environmental Protection – Hazardous Waste, Chs. NR 600-

Rules relating to hazardous waste management.

Optometry Examining Board:

Rules relating to continuing education.

Regulation and Licensing:

Rules relating to substance abuse professionals.

Transportation:

Rules relating to contractual service procurement.

Rules relating to allowing the operation of certain 2-vehicle combinations on certain highways without a permit.

Workforce Development:

Rules affecting **ch. DWD 290**, relating to the adjustment of thresholds for application of prevailing wage rates. **[First Appearance]**.**Scope statements.****Pages 8 to 10**

Agriculture, Trade and Consumer Protection:

Rules affecting chs. ATCP 10, 12 and 17, relating to animal health and disease control.

Natural Resources:

Rules affecting chs. NR 1 and 45, relating to the Ice Age Trail.

Veterans Affairs:

Rules affecting ch. VA 8, relating to modification to county veterans service officers grant program.

Submittal of rules to legislative council clearinghouse.**Pages 11 to 12**

Agriculture, Trade and Consumer Protection:

Rules affecting ch. ATCP 106, relating to price gouging during an emergency.

	Rules affecting chs. ATCP 60, 69, 77, 80 and 82, relating to safe production, processing, distribution and sale of milk and dairy products.
Commerce:	Rules affecting ch. Comm 200, relating to small business enforcement discretion.
Insurance:	Rules affecting ch. Ins 17, relating to fiscal year 2008 fund fees and mediation panel fees.
	Rules affecting ch. Ins 17, relating to Peer Review Surcharge Rates.
Workforce Development:	Rules affecting ch. DWD 290, relating to the adjustment of thresholds for application of prevailing wage rates.
Rule-making notices.	Pages 13 to 26
Agriculture, Trade and Consumer Protection:	Hearing to consider rules affecting ch. ATCP 106, relating to price gouging during an emergency.
	Hearing to consider rules affecting ch. ATCP 112, relating to credit report security freezes.
	Hearings to consider rules affecting chs. ATCP 60, 69, 77, 80 and 82, relating to safe production, processing, distribution and sale of milk and dairy products.
Commerce:	Hearing to consider rules affecting ch. Comm 200, relating to small business enforcement discretion.
Insurance:	Hearing to consider ss. Ins 17.25 (12m) and 17.28 (6s), relating to Peer Review Surcharge Rates.
	Hearing to consider rules relating to ss. Ins 17.01 (3) and 17.28 (6), relating to fiscal year 2008 fund fees.
Regulation and Licensing:	Hearing to consider rules creating chs. RL 160 to 163 and 166 to 168, relating to substance abuse professionals.
Workforce Development:	Hearing to consider rules affecting to ch. DWD 290, relating to the adjustment of thresholds for application of prevailing wage rates.
Submittal of proposed rules to the legislature.	Page 27
Agriculture, Trade and Consumer Protection:	CR 06-085 – Ch. ATCP 156, relating to seed potato certification and grading.
Financial Institutions – Banking:	CR 06-122 – Ch. DFI-Bkg 5, relating to UCC search requests.
	CR 06-123 – Ch. DFI-Bkg 80, relating to non-judicial enforcement and surrender of collateral.
	CR 06-124 – Ch. DFI-Bkg 77, relating to pawnbrokers.
Insurance:	CR 06-118 – Ch. Ins 9, relating to preferred provider plan applicability dates and affecting small business.

Medical Examining Board:	CR 06–114 – Ch. Med 1, relating to the requirements for completion of the 3–step sequence of the United States Medical Licensing Examination (USMLE).
Natural Resources:	CR 06–023 – Chs. NR 127, 160 and 166, relating to safe drinking water loan program. CR 06–025 – Ch. NR 520, relating to balances in the waste management program revenue account. CR 06–037 – Chs. NR 10 and 45, relating to correcting management unit boundaries, clarifying trapping requirements, correcting cross–references and update rules on the identification of tree stands on state lands. CR 06–039 – Ch. NR 5, relating to sound testing methods for airboats. CR 06–079 – Chs. NR 406 and 410, relating to construction permit waivers and affecting small business. CR 06–097 – Ch. NR 1, relating to definition of “generally accepted forestry management practices”. CR 06–102 – Chs. NR 660, etc., relating to hazardous waste management.
Podiatrists Affiliated Credentialing Board:	CR 06–056 – Chs. Pod 1 and 3, relating to waiver of continuing podiatric medical education.
Transportation:	CR 06–128 – Ch. Trans 102, relating to proof of identity.
University of Wisconsin System:	CR 06–078 – Chs. USW 2, 4, 7 and 11, relating to procedures for dismissal of academic staff in special cases.
Rules published with this register and final regulatory flexibility analyses:	Page 28
Sections affected by rule revisions and corrections:	Page 29
Sections affected by revisor’s corrections not published:	Page 30
Executive orders:	Page 31

Emergency rules now in effect

Under s. 227.24, Stats., state agencies may promulgate rules without complying with the usual rule-making procedures. Using this special procedure to issue emergency rules, an agency must find that either the preservation of the public peace, health, safety or welfare necessitates its action in bypassing normal rule-making procedures.

Emergency rules are published in the official state newspaper, which is currently the Wisconsin State Journal. Emergency rules are in effect for 150 days and can be extended up to an additional 120 days with no single extension to exceed 60 days.

Occasionally the Legislature grants emergency rule authority to an agency with a longer effective period than 150 days or allows an agency to adopt an emergency rule without requiring a finding of emergency.

Extension of the effective period of an emergency rule is granted at the discretion of the Joint Committee for Review of Administrative Rules under s. 227.24 (2), Stats.

Notice of all emergency rules which are in effect must be printed in the Wisconsin Administrative Register. This notice will contain a brief description of the emergency rule, the agency finding of emergency or a statement of exemption from a finding of emergency, date of publication, the effective and expiration dates, any extension of the effective period of the emergency rule and information regarding public hearings on the emergency rule.

Copies of emergency rule orders can be obtained from the promulgating agency. The text of current emergency rules can be viewed at www.legis.state.wi.us/rsb/code.

Agriculture, Trade & Consumer Protection (2)

- Rules adopted amending **s. ATCP 10.47 (2) (c) and (3) (b) 3.**, relating to minimum acreage requirements for farm-raised deer hunting preserves.

(1) The Wisconsin department of agriculture, trade and consumer protection ("DATCP") administers state laws related to farm-raised deer. DATCP currently licenses deer farms and issues certificates for deer hunting preserves, pursuant to s. 95.55, Stats., and ch. ATCP 10, Wis. Adm. Code.

(2) Current law generally prohibits deer hunting preserves smaller than 80 acres. However, 2005 Wis. Act 359 (enacted effective May 3, 2006) provides a limited "grandfather" exemption for certain white-tailed deer hunting preserves previously licensed by the Department of Natural Resources ("DNR"). Under Act 359, a white-tailed deer hunting preserve is exempt from the 80-acre minimum size requirement if, *among other things*, the acreage of the hunting preserve is "not less than the acreage subject to the deer farm license on December 31, 2002." This rule clarifies that the "acreage subject to the deer farm license on December 31, 2002" means the *hunting* acreage subject to the deer farm license on December 31, 2002. Without this interpretation, Act 359 would have no practical effect and would be rendered a nullity.

(3) The "grandfather" exemption in Act 359 is limited to hunting preserve operators who apply by November 1, 2006.

DATCP must act on applications within 90 business days. Action may affect an operator's ability to operate during the 2006 hunting season. DATCP is adopting this rule as an emergency rule, in order to facilitate timely action on applications. DATCP could not adopt this rule by normal rulemaking procedures in time to implement Act 359.

Publication Date: October 9, 2006
Effective Date: October 9, 2006
Expiration Date: March 7, 2007
Hearing Date: November 13, 2006

- Rules adopted creating **ch. ATCP 112**, Wis. Adm. Code, relating to credit report security freezes.

Finding of Emergency

(1) The Wisconsin department of agriculture, trade and consumer protection ("DATCP") will administer s. 100.54, Stats. as of January 1, 2007. DATCP is required under s. 100.54 (12), Stats. to adopt rules related to identification required of consumers requesting credit report security freezes.

(2) As of January 1, 2007, s. 100.54, Stats. will be in effect, however without an emergency rule the statute will be unclear regarding what constitutes proper identification for purposes of creating a security freeze, temporarily releasing a security freeze or permanently removing a security freeze from a consumer credit report.

(3) DATCP is adopting this emergency rule for the sole purpose of allowing consumers to clearly place a security freeze on their consumer credit report while the permanent rulemaking process is completed.

Publication Date: January 19, 2007
Effective Date: January 19, 2007
Expiration Date: June 18, 2007
Hearing Date: February 12, 2007
[See Notice this Register]

Dentistry Examining Board

Rules were adopted amending **ch. DE 11**, relating to better identifying the different levels of anesthesia, including nitrous oxide, anxiolysis, conscious sedation-enteral, conscious sedation-parenteral, deep sedation, and general anesthesia, and the requirements for each level.

Finding of Emergency

The board finds that failure to delay the effective date of CR04-095, from January 1, 2007, to July 1, 2007, will create a danger to the public health, safety and welfare. The extra six months are needed to allow the implementation of the rule to occur and to ensure the continued use of conscious sedation for dental patients.

Publication Date: December 21, 2006
Effective Date: December 29, 2006
Expiration Date: May 28, 2007
Hearing Date: January 31, 2007

Financial Institutions – Banking

Rules were adopted revising **ch. DFI—Bkg 77**, relating to pawnbrokers.

Finding of Emergency

The effect of 2005 Wisconsin Act 158 is that pawnbrokers licensed by the department under s. 138.09, Stats., are exempt from s. 138.10, Stats., effective October 1, 2006. Under statutory procedures, however, a permanent rule regulating these pawnbrokers is unlikely to be effective until mid-2007, leaving the public without the safeguards of the permanent rule until that time. Thus the preservation of public safety and welfare necessitates enacting the safeguards of the emergency rule until a permanent rule is in effect.

Publication Date: September 25, 2006
Effective Date: October 1, 2006
Expiration Date: February 28, 2007
Hearing Date: December 13, 2006

Insurance (2)

1. Rules adopted creating **ss. Ins 9.25 (8) and 9.27 (4)**, Wis. Adm. Code, relating to preferred provider plan applicability dates and affecting small business plan limited exemption.

Finding of Emergency

The Commissioner of Insurance finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows:

The rule identifies a limited group of policies issued by licensed insurers offering preferred provider plans that do not comply with newly promulgated ch. Ins 9, Wis. Adm. Code. In compliance with the request of the Joint Committee for the Review of Administrative Rules (JCRAR), this rule must be issued as an emergency rule and permanent rule. It is not possible to complete the permanent rule process prior to the effective date of the chapter, January 1, 2007, therefore this emergency rule is necessary.

The commissioner has filed a notice of scope for drafting the permanent rule corresponding to this emergency rule and will continue with the permanent rule making process. It is intended that one rule hearing can be held to comply with both the emergency rule and permanent rule requirements.

Publication Date: August 31, 2006
Effective Date: September 1, 2006
Expiration Date: January 29, 2007
Hearing Date: December 12, 2006

2. Rules adopted revising **s. Ins 6.77**, relating to underinsured and uninsured motorist coverage in umbrella and commercial policies.

Finding of Emergency

The Commissioner of Insurance finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows:

These changes will modify the rule in light of the recent Supreme Court decisions, *Rebernick v American Family*

Mutual Ins Company, 2006 WI 27 and *Rocker v USAA Casualty Ins Company*, 2006 WI 26. In *Rebernick*, the court held that s. 632.32 (4m), Stats, applies to personal umbrella policies. In *Rocker*, the court held that s. 632.32 (6) (a), Stats, applies to commercial general liability policies and commercial umbrella policies. These interpretations are inconsistent with current insurer practices and OCI's expectation of what would be covered in these types of policies.

Compliance with this interpretation would create significant, if not impossible compliance problems for insurers. Many insurers who write umbrella coverage do not write and are not even licensed to write automobile coverage. A second, difficult issue is that the limits for umbrella coverages are generally very high, \$1,000,000. It is unclear how an umbrella policy would reconcile these limits with the underlying auto policy and underinsured motorist coverage. For this reason, OCI had previously by rule exempted umbrella policies from the similar requirements of the uninsured motorist coverages in s. 632.32, Stats. For similar reasons, the same revision is being made for commercial liability policies.

Publication Date: September 29, 2006
Effective Date: September 29, 2006
Expiration Date: February 26, 2007
Hearing Date: December 11, 2006

Natural Resources (Environmental Protection – Hazardous Waste, Chs. NR 600—)

Rules adopted revising **chs. NR 660 to 665**, relating to hazardous waste management.

Exemption from Finding of emergency

The Department of Natural Resources finds that an emergency exists and the foregoing rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is:

In 2001, EPA proposed regulations to change the hazardous waste manifest requirements under the federal Resource Conservation and Recovery Act (RCRA) to eliminate all state-specific manifest requirements and to require electronic submittal of the manifests. The EPA's final rule was published March 4, 2005, with correcting amendments published on June 16, 2005, and the effective date is September 5, 2006. The new regulations require the use of standardized manifest forms in all states and require certification from EPA in order to print the manifest forms. (Final action on the e-manifest was postponed.) Unlike most RCRA rules, this federal regulation will take effect, nation-wide, on the effective date. The new federal requirements will apply in all states, including Wisconsin, but will not override or supersede Wisconsin's state-specific hazardous waste manifest requirements. Accordingly, the potential exists for conflicting or additional state manifest requirements to exist beginning on that date, and the advantages of a single, uniform nationwide rule will be lost.

The normal administrative rulemaking process cannot be completed in time to conform Wisconsin's hazardous waste manifest requirements to the new EPA manifest regulations by their September 5, 2006 effective date. However, failure to adopt the new federal requirements as state rules by this date may cause legal uncertainty and potential confusion among hazardous waste generators, transporters and treatment, storage and disposal facility operators, as well as

state regulatory program staff. This could interfere with interstate commerce and the orderly functioning of government, imposing unnecessary regulatory costs on Wisconsin individuals and businesses and out-of-state companies doing business in Wisconsin, to the detriment of the public welfare. More importantly, the potential confusion caused by different state and federal manifest requirements could lead to improper transportation and management of hazardous wastes, resulting in a threat to public health or safety and the environment.

Publication Date: September 2, 2006
Effective Date: September 5, 2006
Expiration Date: February 2, 2007
Hearing Date: September 26, 2006

Optometry Examining Board

A rule was adopted creating **ch. Opt 8**, relating to continuing education.

Exemption from finding of emergency

2005 Wisconsin Act 297 section 58 states in part:

“(3) Continuing education rules. (b) ...Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the optometry examining board is not required to provide evidence that promulgating a rule under this paragraph as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this paragraph.”

Plain language analysis

Chapter Opt 8 is being created to incorporate the continuing education requirements that optometrists must complete in order to renew their registrations. As a result of the changes made to ch. 449, Stats., by 2005 Wisconsin Act 297, all optometrist will now be required to complete 30 hours of continuing education. Previously, only optometrists who were certified to use diagnostic pharmaceutical agents (DPA) and therapeutic pharmaceutical agents (TPA) were required to complete continuing education course work.

Publication Date: November 8, 2006
Effective Date: November 8, 2006
Expiration Date: April 7, 2007
Hearing Date: December 7, 2006

Regulation and Licensing

Rules adopted creating **chs. RL 160 to 168**, relating to substance abuse professionals.

Exemption from finding of emergency

Section 9140 (1q) of 2005 Wisconsin Act 25 states in part: “Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.”

Plain language analysis

2005 Wisconsin Act 25 created Subchapter VII of chapter 440, Stats., Substance Abuse Counselors, Clinical

Supervisors, and Prevention Specialists. This Act transferred the certification and regulation of Alcohol and other Drug Abuse (AODA) counselors from the Department of Health and Family Services to the Department of Regulation and Licensing, effective 2006. This proposed rule-making order creates rules relating to definitions, requirements for certification, supervised practice, scope of practice, education approval and professional liability insurance for substance abuse professionals.

Publication Date: November 27, 2006
Effective Date: December 1, 2006
Expiration Date: April 30, 2007
Hearing Date: February 13, 2007
 [See Notice this Register]

Transportation (2)

1. Rules adopted creating **ch. Trans 515**, relating to contractual service procurement.

Exemption from finding of emergency

The Legislature, by Section 8 of 2005 Wis. Act 89, provides an exemption from a finding of emergency for the adoption of the rule.

Analysis Prepared by the Department of Transportation

The proposed rule requires a cost benefit analysis before procuring engineering or other specialized services under s. 84.01 (13), Stats., in excess of \$25,000 when those services are normally performed by state employees. The required analysis includes a comparison between the costs of contracting out and performing the services with state employees. The analysis also considers other subjective factors such as timeliness, quality and technical expertise.

Publication Date: July 1, 2006
Effective Date: July 1, 2006
Expiration Date: See section 8 (2) of 2005 Wis. Act 89
Hearing Date: August 8, 2006

2. Rules adopted revising **ch. Trans 276**, relating to allowing the operation of certain 2-vehicle combinations on certain highways without a permit.

Exemption from finding of emergency

The Legislature, by Section 7 of 2005 Wis. Act 363, provides an exemption from a finding of emergency for the adoption of the rule.

Plain language analysis

Section 348.07 (1), Stats., historically has limited vehicle lengths on Wisconsin highways to 65 feet. Section 348.07(2), Stats., allowed vehicles meeting the specifications of that subsection to operate without permits despite exceeding the 65-foot limit of subsection (1).

2005 Wis. Act 363 amended s. 348.07, Stats., and essentially made 75 feet the default permitted length on the state trunk highway system. Wisconsin’s old default 65-foot overall length limit still applies on all local roads but only applies to state trunk highways that are designated as 65-foot restricted routes by the Department. This emergency rule making establishes a preliminary list of such “65-foot restricted routes.”

Prior to Act 363, s. 348.07 (4), Stats., permitted the Department to designate “long truck routes” upon which no overall length limits apply. The Department designates the

state's long truck routes in s. Trans 276.07. This rule making does not affect those longstanding designations.

The new "default" 75-foot overall length limit applies on state highways that are neither designated as 65-foot restricted routes under this rule making nor long truck routes under s. Trans 276.07.

Definitions have been added to the rule to make it easier to identify the nature of designations made by the Department in Ch. Trans 276.

In drafting this rule the Department noticed several items that it believes may be of special interest to the legislature and which, in the Department's view, deserve special legislative attention. First, Act 363 did not grant any authority for 75-foot vehicles using the new 75-foot routes to leave those routes to reach fuel, food, maintenance, repair, rest, staging, terminal or vehicle assembly facilities or points of loading or unloading. The Department does not believe this oversight was intentional and, on an emergency basis, has designated the intersection of each 75-foot route and any other highway as a long truck route under its authority in s. 348.07 (4), Stats. This will permit trucks to exceed the 65-foot default length limit on local roads to access such facilities and make deliveries. The Department encourages the legislature to consider statutorily establishing access rights for vehicles using 75-foot restricted routes.

The second consequence of Act 363 the Department has discovered in drafting this emergency rule is that one statute that formerly restricted double-bottom tractor-trailer combinations to the state's long-truck network was repealed by the deletion of the reference to s. 348.07 (2) (gm), Stats., by the Act's amendment of s. 348.07 (4), Stats. Under the amended statute, as revised by Act 363, it might appear to a reader that double bottom trucks of unlimited length may operate upon any highway in the state, including local roads and streets, without permits. Section 348.08 (1) (e), Stats., however, continues to provide that double-bottom trucks be restricted to highways designated by the department under s. 348.07 (4). WisDOT believes this provision continues to limit double-bottom operation to long truck routes designated by the Department under s. 348.07 (4), Stats. WisDOT would suggest the deleted reference to (2) (gm) in 348.07 (4), Stats., be re-inserted into the statute to avoid confusion.

Finally, the Department notes that s. 348.07, Stats., is becoming difficult to decipher from a legal standpoint because of the many amendments that have been made to it

over the years. It may be that recodifying the statute for the purpose of clarification of the length limitations of Wisconsin law would be helpful to truck and long vehicle operators in this state.

Publication Date: September 15, 2006
Effective Date: September 15, 2006
Expiration Date: See section 7 (2) of 2005 Wis. Act 363
Hearing Date: October 4, 2006

Workforce Development

Rules adopted amending s. DWD 290.155 (1), relating to the adjustment of thresholds for application of prevailing wage rates.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that the rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

Adjusting the thresholds for application of the prevailing wage rate requirements by emergency rule ensures that the adjustments are effective on a date certain that is prior to the time of year that project requests are generally submitted to the Department and applicability of the prevailing wage law is determined. The adjustment avoids imposing an additional administrative burden on local governments and state agencies caused by an effective decrease of the thresholds due solely to inflation in the construction industry. If these new thresholds are not put into effect by emergency rule, the old thresholds will remain effective for approximately six to seven months, until the conclusion of the permanent rule-making process. The thresholds are based on national construction cost statistics and are unlikely to be changed by the permanent rule-making process.

Publication Date: December 28, 2006
Effective Date: January 1, 2007
Expiration Date: May 31, 2007
Hearing Date: February 19, 2007
 [See Notice this Register]

Scope statements

Agriculture, Trade and Consumer Protection

Subject

Animal health and disease control.

Policy Analysis

Objective of the rule. This rule will modify current animal health rules. Among other things, this rule may:

- Update current rules related to animal markets, dealers, truckers and animal transport vehicles, including rules related to livestock identification and records.
- Modify current rules related to livestock premises registration.
- Revise current rules related to chronic wasting disease in farm-raised deer. Among other things, this rule may incorporate new federal rules.
- Adjust animal health fees, as necessary, to address a potential deficit in DATCP's animal health program revenue accounts.
- Make other miscellaneous changes to current animal health rules.

Preliminary Policy Analysis

Animal Markets, Dealers and Truckers

DATCP regulates animal markets, animal dealers, animal truckers and animal transport vehicles under ss. 95.68, 95.69, 95.71 and 95.71 (4), Stats. This rule may update current rules, to improve animal disease control and clarify existing rules. Among other things, this rule may clarify current requirements related to vehicle identification, livestock identification and livestock records.

Livestock Premises Registration

Wisconsin implemented a mandatory livestock premises registration program effective January 1, 2006 (see s. 95.51 Stats., and ch. ATCP 17, Wis. Adm. Code). The program is designed to improve disease control, food safety and emergency response capacity. Over 54,000 livestock facilities have been registered to date. This rule may modify current registration procedures, based on program experience to date. This rule may streamline the registration process, and make it more user-friendly. It may also accommodate some concerns of Amish livestock operators, who object to portions of the current rules.

Farm-raised Deer

DATCP currently regulates persons who keep, move or import farm-raised deer (deer, elk and other cervids). Current rules include regulations related to deer farms, hunting preserves, disease monitoring (including CWD monitoring), identification and movement of farm-raised deer, and reporting and recordkeeping requirements.

This rule may update current rules, based on experience to date under those rules. This rule may also incorporate new federal rules proposed by the United States Department of Agriculture (USDA), including rules related to CWD monitoring, testing for interstate movement, and state certification of CWD herd status.

Under current rules, all keepers of farm-raised deer must register with DATCP. Registration fees are based on the

number of deer in the registered herd. This rule may revise the current fee structure to reflect the purposes for which a herd is kept, the DATCP workload associated with different herd types, and the health risks associated with different herd management practices.

Among other things, this rule may:

Align Wisconsin farm-raised deer regulations with federal standards.

Address the handling of escaped farm-raised deer.

Require herd plans for herds that are diagnosed with a disease.

Require post-depopulation management of infected herd premises.

Modify record keeping and identification requirements for farm-raised deer herds.

Modify registration requirements and fees for farm-raised deer herds.

Modify disease monitoring requirements.

Animal Health Fees

DATCP currently charges fees for animal health licenses, registrations and forms. DATCP may revise fees by rule. This rule may revise fees, as necessary, to address a potential deficit in animal health program revenue accounts.

Technical Changes

This rule may make a number of miscellaneous, largely technical, changes to current animal health rules.

Statutory Authority

Sections 93.07 (1) and (10) and ch. 95, Stats.

Comparison with Federal Regulations

Most animal health regulations are adopted and administered at the state level. However, USDA administers federal regulations related to the interstate movement of animals, particularly with respect to certain major diseases. States regulate intrastate movement and imports to the state. States certify the disease status of certain herds, at the request of herd owners, to facilitate interstate movement of animals from those herds. States also license and regulate entities such as animal markets, animal dealers and animal truckers (regulations vary by state).

State regulation of interstate animal movement is generally consistent with federal standards, where applicable. However, states may impose additional import requirements if those requirements are reasonably designed to prevent the spread of disease, and do not impose an unreasonable burden on interstate commerce.

Wisconsin's current rules related to farm-raised deer are consistent with applicable federal rules. However, USDA is proposing changes to federal rules related to CWD in farm-raised deer. The proposed federal rules may modify current testing and monitoring requirements for interstate movement, and may modify current identification requirements for interstate movement. DATCP proposes to modify current state rules, as necessary, to be consistent with the new federal rules.

USDA has established a voluntary livestock premises registration program that is available to all states. USDA has

not established a mandatory program, or required states to establish a mandatory program. Wisconsin is one of a small number of states that has established a mandatory premises registration program. Wisconsin's mandatory program is consistent with USDA's voluntary program (USDA assigns registration numbers to Wisconsin registered livestock premises, using the federal premises numbering system).

Entities Affected by the Rule

The rule will provide important health protection for the Wisconsin livestock industry. This rule will have a direct impact on animal markets, animal dealers, animal truckers, veterinarians, livestock operators, and keepers of farm-raised deer. In some cases, this rule may add to current regulations, but in other cases this rule may streamline or eliminate current regulations.

Policy Alternatives:

Animal Markets, Dealers and Truckers

If DATCP takes no action, current rules will remain in effect. Failure to update rules may make it more difficult to trace animals in the event of an animal disease outbreak.

Livestock Premises Registration

If DATCP takes no action, current rules will remain in effect. That may result in unnecessary administrative and compliance costs. It may also impair long-term effectiveness and industry acceptance of the premises registration program.

Farm-raised Deer

If DATCP takes no action, current rules will remain in effect. When the national CWD program is implemented, current Wisconsin rules will be inconsistent with federal standards. Among other things, that may limit export opportunities for the farm-raised deer industry. Current state rules do not adequately address all of the issues that have come to light, in recent years, related to the control of CWD in farm-raised deer.

Animal Health Fees

If DATCP takes no action to increase animal health fees, it will soon run a deficit in its animal health program revenue account. If the Legislature provides no alternative funding source, DATCP will need to reduce or eliminate critical disease control and bio-security programs. That will reduce the state's defenses against serious diseases that pose an ever more dangerous threat to animal and human health, and to the state's agricultural and food economy.

Statutory Alternatives

None at this time.

Staff Time Required

DATCP estimates that it will use approximately 0.80 FTE staff to develop this rule. That includes time required for investigation and analysis, rule drafting, preparing related documents, coordinating advisory committee meetings, holding public hearings and communicating with affected persons and groups. DATCP will use existing staff to develop this rule. DATCP may need additional personnel to administer this rule, once the rule is adopted (DATCP will include a fiscal estimate with the hearing draft rule).

Natural Resources

Subject

Revision to Chapter NR 45 which contains the administrative rules for the use of Department properties. Department staff review Chapter NR 45 every two years and

suggest revisions designed to ensure the health and safety of people using Department properties, propose use regulations necessary for the protection of natural resources on the properties, adjust fees, and clarify existing rules.

Revision to Chapter 1 to clarify the purpose of the Ice Age Trail and identify allowed activities.

Policy Analysis

A number of the changes being considered are for the purpose of clarifying, simplifying or improving existing rules. There are also a few specific property rules being considered for the new Lakeshore State Park. One would prohibit alcohol consumption at Lakeshore except by permit. Another would close the park at 10:00 p.m. vs. the typical state park time of 11:00 p.m. to remain consistent with other Milwaukee County facilities.

A few of the proposals being considered would represent a change from past policy. The state park program is proposing the addition of rustic camper cabins in some state park campgrounds. These cabins would have electricity but no plumbing or cooking facilities. Campers would use the campground's toilet/shower facilities and any cooking would occur outside on the site. These cabins meet the needs of new campers that do not have tents and those wishing to sleep off of the ground in sheltered accommodations. This type of accommodation is very popular within many other state park systems.

A number of changes to state park and forest camping fees are being considered including the establishment of fees for rustic cabins, yurts, and teepees in state parks and the addition of seven properties to the list of state parks which charge an additional \$3.00 per day for camping due to local market conditions. Additionally, this fee differential would now apply all year, rather than just in the summer season. This would increase this list to a total of 15 state parks that would charge this fee differential. The current differential in camping fees between weekdays and weekends, as well as the fee differential for time of year would be eliminated in order to simplify the fee structure.

A state trail fee increase of \$5 annually from \$15 to \$20 to meet increasing trail costs. This fee has not been raised since 2004.

A change in picnic shelter reservations would allow reservations to be made 11 months in advance rather than the current rule which allows reservations to be taken on the first business day in January. This is intended to improve customer service and match the campsite reservation time frame.

The Department is also proposing to establish an annual \$10 "camp pass" fee that would give the holder authorization to camp on any Department lands where camping is authorized but fees are currently not being charged such as on the northern flowage properties and the Lower Wisconsin River property. These more primitive camping opportunities offer an important recreational alternative; however, there are costs in term of staff and supplies to maintain these areas and the supporting properties.

A bulleted list of the substantive proposals being considered by the Department follows.

State Park and Forest Camping:

Allow construction of "rustic cabins" and "indoor group camps" on state park system lands

- Rustic cabins would be less than 400 sq. ft. in size, without sewer and water hook-ups

- Rustic cabins could be limited to a maximum of 10% of the total sites within a given property

–A maximum fee for rustic cabins of \$80.00 would also be proposed

Define “yurt” and “teepee” and include them in the list of facilities requiring a fee established by the department

Prohibit pets and open flames (smoking cigarettes, propane lamps, stoves, etc.) inside teepees, yurts, and rustic cabins

Clarify the days/times for summer holiday weekend campground stays

Eliminate the weekend and holiday camping fee differential

Add additional “high–demand” parks where a camping fee differential is charged and charge the differential year round for the high demand parks

Other Fee issues:

Increase annual state trail pass fee by \$5.00

Institute a “camping pass”. The purchase of an annual camping pass would be required for camping at locations on state properties where camping is allowed but where a fee is not currently charged such as dispersed camping areas and state–owned islands

Designate a recent purchase (Old Veteran’s Lake) at Peshtigo River State Forest as a vehicle admission fee area

Require camping reservations and fees for a new group campsite in the Turtle–Flambeau Scenic Waters Area

Additional policies:

Clarify the hours of operation for guests at Lakeshore State Park

Prohibit alcohol at Lakeshore State Park except by boat campers or by permit requirement

Repeal the alcohol ban at state parks and forests that is now out–dated with the rise in the statewide legal drinking age from 18 to 21

Add Point Beach State Forest to the list of properties where pets are kept on a leash at all times

Modify facility reservation dates and facility reservation refunds

Trails:

Clarify definitions and list permitted activities and uses for State Ice Age Trail Areas

Clarify NR 1.30 (1) (e) to define State Trails as those specifically listed in code

Define off–road vehicles, and reduce the allowed decibel limit for Off–Road Motorcycles and Dual–Sport Motorcycles operated on department lands. Institute additional safety and enforcement provisions

Change wording from “trail biking” to “off–road motorcycling” to reflect department codes and publications

Modify NR 51.70 (1) to acknowledge all of the uses that are/will be allowed on state trails

Update list of designated state trails in NR 51

Clarify that there is no operation of ATVs off designated trails

Miscellaneous:

Restrict the use of electric vehicles (segway/other) on state lands to areas posted or identified in the property master plan without further restricting their use by persons with disabilities

Restrict the butchering of large game animals at campsites on state lands

Increase the restrictions on the use of detergents and shampoos adjacent to or in all lakes and streams on state lands rather than just on the shoreline zone of the Great Lakes

Allow certain classes of department employees to serve as directors and officers of Friends groups

Clarify the rule regarding fire and refuse burning and add properties that are exempt from the rule

Codify the regulations required as a condition of the property donation at the newly acquired Inch Lake Natural Area property

Statutory Authority

ss. 23.091, 23.09 (2) (intro), 23.11 (1), 23.28 (3), 23.293, 27.01 (2) (j), 27.01 (10) (b) and (f) and 227.11 (2) (a), Stats.

Staff Time Required

Approximately 140 hours will be needed by the Department.

Veterans Affairs

Subject

VA 8.

Objective of the rule. The Department seeks to modify the county veterans service officers grant program rules by eliminating any reference to population range and pay range minimums as eligibility criteria.

Policy Analysis

The Department administers a county veterans service officers grant program under s. 45.82, Wis. Stats. and Chapter VA 8 of the Wisconsin Administrative Code. Under the current code language a county must employ a county veterans service officer whose salary meets the pay range hiring minimum for its class of county, based upon size, in order to be eligible for a grant.

The pay schedule identified in the Code, state pay schedule no. 1 for general non–represented administrative and management positions, is obsolete. Furthermore, the current salaries of county veterans service officers, based upon its class, significantly exceed the applicable salary minimums. In fact, 43 out of 72 counties exceed the applicable salary maximums. In consultation with the CVSO Association and upon the approval of the CVSO Advisory Council, the Department and those organizations agree that the obsolete Code language is no longer needed. The Department proposes an amendment to the Code eliminating the minimum salary provision.

Statutory Authority

Sections 45.03 (2) and 45.82, Wis. Stats.

Staff Time Required

Approximately 4 hours of Department of Veterans Affairs staff time will be needed to promulgate the rules.

Entities Affected by the Rule

The rule will affect applicants for grants under the county veterans service officer grant program.

Comparison with Federal Regulations

The county veterans service officers grant program is administered under the authority of state law. There are no existing or proposed federal regulations that address the activities to be regulated by the rule.

Submittal of rules to legislative council clearinghouse

*Please check the Bulletin of Proceedings – Administrative Rules
for further information on a particular rule.*

Agriculture, Trade and Consumer Protection

The Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it has referred the following proposed rule to the Wisconsin Legislative Council Rules Clearinghouse, pursuant to s. 227.15, Stats., on January 8, 2007.

Analysis

Subject: Price gouging during an emergency.
Adm. Code Reference: Ch. ATCP 106.
DATCP Docket #: 06–R–08

Agency Procedure for Promulgation

The department will hold public hearings on this rule after the Rules Clearinghouse completes its review. The department's division of trade and consumer protection is primarily responsible for this rule.

Contact Person

If you have questions, you may contact Kevin LeRoy at 608–224–4928.

Agriculture, Trade and Consumer Protection

On January 16, 2007, the Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it has referred the following proposed rule to the Wisconsin Legislative Council Rules Clearinghouse, pursuant to s. 227.15, Stats.

Analysis

Subject: Safe production, processing, distribution and sale of milk and dairy products.
Adm. Code Reference: Chs. ATCP 60, 69, 77, 80 and 82.

DATCP Docket #: 05–R–04

Agency Procedure for Promulgation

The department will hold public hearings on this rule after the Rules Clearinghouse completes its review. The department's Division of Food Safety is primarily responsible for this rule.

Contact Person

If you have questions, you may contact Tom Leitzke at 608–224–4711.

Commerce

On January 16, 2007, the Department of Commerce submitted proposed rules to the Legislative Council Rules clearinghouse.

Analysis

Statutory authority: Section 227.14 (4m) and 227.17, Stats.

The proposed rules affect ch. Comm 200, relating to small business enforcement discretion.

Agency Procedure for Promulgation

The department will hold a public hearing on this rule. The department's Safety and Buildings Division is primarily responsible for this rule.

Contact Person

Sam Rockweiler
Code Development Consultant
608–266–0797
srockweiler@commerce.state.wi.us

Insurance

In accordance with ss. 227.14 and 227.15, Stats., the Office of the Commissioner of Insurance is submitting a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse on January 9, 2007.

Analysis

These changes will affect Section Ins 17.01 (3) and 17.28 (6), Wis. Adm. Code, relating to Fiscal year 2008 Fund Fees and Mediation Panel Fees.

Agency Procedure for Promulgation

The date for the public hearing is February 19, 2007.

Contact Person

A copy of the proposed rule may be obtained from the WEB site at:

<http://oci.wi.gov/ocirules.htm>

or by contacting Inger Williams, Services Section, Office of the Commissioner of Insurance, at (608) 264–8110. For additional information, please contact Theresa Wedekind at (608) 266–0953 or e-mail at Theresa.Wedekind@oci.state.wi.us at OCI.

Insurance

In accordance with ss. 227.14 and 227.15, Stats., the Office of the Commissioner of Insurance is submitting a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse on January 9, 2007.

Analysis

These changes will affect Section Ins 17.25 (12m) and 17.28 (6s), Wis. Adm. Code, relating to Peer Review Surcharge Rates.

Agency Procedure for Promulgation

The date for the public hearing is February 19, 2007.

Contact Person

A copy of the proposed rule may be obtained from the WEB site at:

<http://oci.wi.gov/ocirules.htm>

or by contacting Inger Williams, Services Section, Office of the Commissioner of Insurance, at (608)

264-8110. For additional information, please contact Theresa Wedekind at (608) 266-0953 or e-mail at Theresa.Wedekind@oci.state.wi.us at OCI.

Workforce Development

On January 12, 2007, the Department of Workforce Development submitted proposed rules to the Legislative Council Rules clearinghouse.

Analysis

Statutory authority: Sections 66.0903 (5), 103.49 93g) and 227.11 (2), Stats.

The proposed rules affect s. DWD 290.155 (1), relating to the adjustment of thresholds for application of prevailing wage rates.

Agency Procedure for Promulgation

A public hearing is required and will be held on February 19, 2007. The Equal Rights Division is the organizational unit that is primarily responsible for promulgation of the rule.

Contact Person

Elaine Pridgen

Telephone: (608) 267-9403

email: elaine.pridgen@dwd.state.wi.us

Rule-making notices

Notice of Hearings

Agriculture, Trade and Consumer Protection

[CR 07-004]

The state of Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold public hearings on a proposed new rule, Chapter ATPC 106, Wis. Adm. Code, relating to Price Gouging During and Emergency.

DATCP will hold three public hearings at the times and places shown below. DATCP invites the public to attend the hearings and comment on the proposed rule. Following the public hearings, the hearing record will remain open until Friday, March 16, 2007 for additional written comments. Comments may be sent to the Division of Trade and Consumer Protection at the address below, by email to kevin.leroy@datcp.state.wi.us or online at <https://apps4.dhfs.state.wi.us/admrules/public/Home>

You may obtain a free copy of this rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Trade and Consumer Protection, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224-4928 or emailing kevin.leroy@datcp.state.wi.us. Copies will also be available at the hearings. To view the proposed rule online, go to:

<https://apps4.dhfs.state.wi.us/admrules/public/Home>

To provide comments or concerns relating to small business, please contact DATCP's small business regulatory coordinator Keeley Moll at the address above, by emailing to Keeley.Moll@datcp.state.wi.us or by telephone at (608) 224-5039.

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by February 13, 2007, by writing to Kevin LeRoy, Division of Trade and Consumer Protection, P.O. Box 8911, Madison, WI 53708-8911, telephone (608) 224-4928. Alternatively, you may contact the DATCP TDD at (608) 224-5058. Handicap access is available at the hearings.

Hearing Dates and Locations:

Tuesday, February 20, 2007

2:00 p.m. to 4:00 p.m.

DATCP Northwest Regional Office
3610 Oakwood Hills Pkwy
Eau Claire, WI 54701-7754

Wednesday, February 21, 2007

9:30 a.m. to 11:30 a.m.

DATCP Northeast Regional Office
Room 152A
200 N Jefferson Street
Green Bay WI 54301

Tuesday, February 27, 2007

9:30 a.m. to 11:30 a.m.

Department of Agriculture, Trade and Consumer Protection

2811 Agriculture Drive, Board Room (CR-106)

Madison, Wisconsin, 53718-6777

Analysis Prepared by the Department of Agriculture, Trade and Consumer Protection

This rule implements s. 100.305, Stats. (created by 2005 Wis. Act 450), which prohibits price gouging in sales of consumer goods or services during an emergency declared by the Governor. This rule includes standards for determining what constitutes illegal price gouging.

Statutory Authority

Statutory Authority: ss. 93.07 (1), 93.15 and 100.305 (3), Stats.

Statutes Interpreted: ss. 93.06 (1) and (9), 93.15, 93.16 and 100.305, Stats.

The Wisconsin department of agriculture, trade and consumer protection ("DATCP") is responsible for administering the price gouging prohibition under s. 100.305, Stats. Section 100.305, Stats., prohibits sellers from selling "consumer goods or services" at wholesale or retail at "unreasonably excessive prices" if the Governor, by executive order, has certified that the state or a part of the state is in a "period of abnormal economic disruption" due to an emergency. An emergency may include, for example, a destructive act of nature, a disruption of energy supplies that poses a serious risk to the public health or welfare, a hostile action, or a strike or civil disorder.

DATCP has broad general authority, under s. 93.07 (1), Stats., to adopt rules to implement laws under its jurisdiction. Under s. 100.305 (3), Stats., DATCP is specifically required to adopt rules defining what constitutes an "unreasonably excessive price" for purposes of the price gouging prohibition under s. 100.305, Stats.

Under ss. 93.06 (1) and (9) and 93.14 to 93.16, Stats., DATCP may investigate possible rule violations, and may require persons to provide documents, testimony and other evidence related to its investigation. Under s. 93.15, Stats., DATCP may by general order (rule) require persons to answer DATCP questions and submit documents for inspection.

Rule Content

Under this rule, a seller may not sell a consumer good or service in a declared emergency area during a declared emergency period at a price that is more than 10% above the highest price at which the seller sold like consumer goods or services to like customers in the relevant trade area during the 60-day period immediately preceding the emergency declaration. A seller may charge a higher price if the seller can prove, based on evidence in the seller's possession at the time of sale, that any of the following apply:

The higher price does not exceed the seller's cost plus normal markup. "Normal markup" means the percentage markup, over the seller's cost, which the seller regularly used in sales of like goods or services to like customers in the relevant trade area during the 60-day period immediately preceding the emergency declaration. This allows sellers to pass on bona fide cost increases.

The higher price is required by law. For example, a seller may prove that the higher price is required to comply with Wisconsin's Unfair Sales Act ("minimum markup law"), s. 100.30, Stats.

The Governor's emergency declaration directly or impliedly exempts the sale from coverage under the emergency declaration.

Under this rule, DATCP may require a seller to submit written, documented answers to DATCP questions related to the seller's compliance with this rule, including information related to any of the following:

The highest price at which the seller sold a consumer good or service to like customers in the relevant trade area during the 60-day period immediately preceding the emergency declaration.

The scope of the relevant trade area.

Any defenses claimed by the seller under this rule.

Other information relevant to DATCP's investigation.

Federal and Surrounding State Regulations

Federal Law

At various times in United States history, the federal government has imposed price controls. There are no federal "price gouging" prohibitions currently in effect. However, there are federal laws that set or limit prices for certain products or services in certain sectors. Some of these laws may preempt state "price gouging" provisions related to the federally-regulated products or services. For example, state law may not regulate interest rates charged by federally chartered banks, or certain prices charged by certain federally regulated common carriers. The scope and effect of federal regulation varies by industry sector, and is highly specific to individual federal programs.

Other States

Many states have prohibited price gouging during declared periods of emergency. Most of those states prohibit prices above pre-emergency prices, except that most states allow sellers to pass on increased costs. Four states prohibit increased markups over cost, and 6 states cap price increases at some percentage such as 10% or 25%.

Nineteen states prohibit prices that are "unconscionably excessive," "exorbitant," "unjustified," or "grossly excessive" without defining those terms or establishing more specific standards. However, the New York attorney general found that New York's broad prohibition against "unconscionably excessive" prices was unworkable without more specific standards.

The states surrounding Wisconsin have the following regulations:

Illinois, on September 2, 2005, adopted an emergency rule (now expired) which prohibited "unconscionably high prices for petroleum products."

Indiana prohibits price gouging in the sale of fuel. Price gouging occurs if a retailer charges a price that grossly exceeds the average price at which the fuel was readily available during the 7 days immediately preceding the declared emergency and the increase is not attributable to cost factors to the retailer.

Iowa regulates prices on "merchandise needed by disaster victims." The Iowa regulation prohibits "unjustified prices" during times of disaster and recovery (60 day maximum) in a declared disaster zone.

Michigan's consumer act prohibits, among other things, a price that is "grossly in excess" of the price at which similar property or services are sold.

Minnesota does not regulate price gouging.

Ohio prohibits, during a state of emergency, prices that are substantially higher than "the price at which the goods or services were readily obtainable during the 30 days

immediately preceding the state of emergency" or "the average price of the goods or services during the 30 days immediately preceding the state of emergency."

Business Impact Analysis

Depending on the scope of a declared emergency, this rule could conceivably affect nearly every business that sells consumer goods in the state (whether at wholesale or retail). A declared emergency may be statewide or localized in scope, and may be broad-based or confined to certain economic sectors. The impact of this rule will vary accordingly.

This rule could have a substantial impact on a wide array of businesses. But it is not possible to predict the impact on individual businesses or on business generally.

Whenever it applies in an emergency, this rule will limit the prices that may be charged by affected businesses. This rule prohibits prices that are more than 10% higher than pre-emergency prices, unless sellers can document that their higher prices do not exceed their cost plus normal markup. Sellers are thus free to pass on relevant cost increases, if they can document those increases.

This rule applies only when the Governor, by executive order, issues an emergency declaration. The emergency declaration determines the scope of coverage, and may exempt certain business sectors from coverage. This rule applies only for the period of time that the emergency declaration remains in effect.

This rule provides some latitude for price adjustments in response to supply and demand, and allows sellers to pass on bona fide cost increases. However, this rule does ultimately set limits on the prices that manufacturers, wholesaler distributors and retailers may charge. Some sellers may withhold goods or services from the market rather than sell at those limited prices. Retailers may benefit from wholesale price limitations, but may suffer from wholesaler decisions to withhold goods or services from distribution.

Under 2003 Wis. Act 145, DATCP and other agencies must adopt rules spelling out their rule enforcement policy for small businesses. DATCP has adopted a separate rule outlining its small business enforcement policy (see ATCP 1, subch. VII). DATCP will follow that rule in the administration of this price gouging rule. DATCP will, to the maximum extent feasible, seek voluntary compliance with this price gouging rule.

This rule first applies to small businesses 2 months after it first applies to other businesses, as required by s. 227.22 (2) (e), Stats. This rule will not apply to small businesses during declared emergencies that fall within that 2-month period, but will apply to small businesses during subsequent declared emergencies. If a declared emergency period starts before the small business effective date, but extends beyond the small business effective date, this rule will apply to small businesses for that portion of the emergency period that occurs after the small business effective date.

Notice of Hearing

Agriculture, Trade and Consumer Protection

The Department of Agriculture, Trade and Consumer Protection announces that it will hold a public hearing on an emergency rule relating to Credit Report Security Freezes. This emergency rule would create a definition for what constitutes proper identification for a consumer who asks a credit reporting agency to create, release, or terminate a security freeze.

DATCP will hold one hearing at the time and place shown below. DATCP invites the public to attend the hearing and comment on the emergency rule. Following the public

hearing, the hearing record will remain open until Monday, February 26, 2007, for additional written comments. Comments may be sent to the Division of Trade and Consumer Protection at the address below or by e-mail to Michelle.Reinen@datcp.state.wi.us.

You may obtain a free copy of this rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Trade and Consumer Protection, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224-5160 or emailing Michelle.Reinen@datcp.state.wi.us. Copies will also be available at the hearing. To view the proposed rule online, go to:

<https://apps4.dhfs.state.wi.us/admrules/public/Home>

To provide comments or concerns relating to small business, please contact DATCP's small business regulatory coordinator Keeley Moll at the address above, by emailing to Keeley.Moll@datcp.state.wi.us or by telephone at (608) 224-5039.

Hearing impaired persons may request an interpreter for the hearing. Please make reservations for a hearing interpreter by February 2, 2007, by writing to Michelle Reinen, Division of Trade and Consumer Protection, P.O. Box 8911, Madison, WI 53708-8911, telephone (608) 224-5160. Alternatively, you may contact the Department TDD at (608) 224-5058. Handicap access is available at the hearing.

Hearing Date and Location

Monday, February 12, 2007

1:30 p.m. to 3:30 p.m.

Department of Agriculture, Trade and Consumer Protection

2811 Agriculture Drive, Board Room (CR-106)

Madison, Wisconsin, 53718-6777

Handicapped accessible

Analysis Prepared by the Department of Agriculture, Trade and Consumer Protection

This emergency rule implements s. 100.54, Stats. (created by 2005 Wis. Act 140), related to credit report security freezes. This rule clarifies the information that credit reporting agencies may request in order to verify the identity of persons requesting credit report security freezes. Credit reporting agencies must adopt written procedures to comply with s. 100.54, Stats., and this rule.\

Statutory Authority

Statutory Authority: ss. 93.07 (1) and 100.54 (12), Stats.

Statutes Interpreted: s. 100.54, Stats.

The Wisconsin Department of Agriculture, Trade and Consumer Protection ("DATCP") has broad general authority, under s. 93.07 (1), Stats., to interpret laws under its jurisdiction. Section 100.54 (12), Stats., specifically requires DATCP to adopt rules related to identification required of consumers requesting credit report security freezes.

Background

Section 100.54, Stats., created by 2005 Wisconsin Act 140, regulates access to consumer credit reports. The law permits a consumer to create a "security freeze" on his or her consumer credit report. A security freeze limits the release and distribution of the consumer credit report. At any time after creating a security freeze, the consumer may ask the credit reporting agency to release the consumer's credit report for a specified period of time, or to terminate the security freeze altogether.

A consumer who asks a credit reporting agency to create or release a security freeze must provide information to verify the consumer's identity. Under s. 100.54 (12), Stats., DATCP must adopt rules to define what constitutes proper identification.

Emergency Rule

The department is adopting this emergency rule pursuant to s. 100.54 (12), Stats. Section 100.54, Stats., becomes effective on January 1, 2006. At that time, the credit reporting agencies must honor a consumer's request for a security freeze. Since a permanent rule will not be in place at the time the law takes effect, credit reporting agencies will not know what information they may use to identify consumers who request the security freeze unless this emergency rule is adopted. Adopting this emergency rule will enable credit reporting agencies to comply with the statute by defining the types of information they may use to identify consumers who request the security freeze.

This emergency rule does all of the following:

- Spells out the information that a credit reporting agency may require of a consumer who asks the agency to create a security freeze, in order to verify the consumer's identity.
- Spells out the information that a credit reporting agency may require of a consumer who asks the agency to release or terminate a security freeze, in order to verify the consumer's identity. The agency may require the same information that it required to create the security freeze and may, in addition, require a password assigned to the consumer when the security freeze was created.

Fiscal Impact

This emergency rule will have no significant fiscal impact on DATCP or local units of government.

Business Impact

This emergency rule only affects credit reporting agencies by regulating how the agency may identify consumers who request security freezes or changes to their security freeze status. The rule has no effect on a business that is not a credit reporting agency. Currently, there are only 3 credit reporting agencies operating in the United States. None of these are small businesses.

Federal Regulations

The federal Fair Credit Reporting Act of 2003 allows consumers who are victims of identity theft to freeze their credit reports. If a consumer is not a victim of identity theft, they have no option under federal law to place a freeze on their credit report. For victims of identity theft, federal rules under 16 CFR § 614.1 spell out the information that a credit reporting agency may use to verify the identity of consumers who ask the agency to create or release a security freeze. Federal standards are consistent with the standards in s. 100.54, Stats., and this rule.

Regulations in Surrounding States

Approximately 17 states have enacted laws that require consumer credit reporting agencies to freeze consumer credit reports upon request. Under all of those laws, credit reporting agencies may require requesting consumers to submit information to verify their identity. Most states allow credit reporting agencies to demand "information generally deemed sufficient to identify a person." If that information is insufficient, some states allow the consumer reporting agency to request "additional information concerning the consumer's employment and personal or family history in order to verify his or her identity."

Of the states surrounding Wisconsin, Illinois and Minnesota have enacted security freeze legislation. Security freeze legislation has been introduced, but not yet enacted, in Iowa and Michigan.

The Minnesota law took effect on August 1, 2006 and the Illinois law took effect on January 1, 2006. The Minnesota and Illinois laws, like most other state laws on the subject, allow credit reporting agencies to demand “information generally deemed sufficient to identify a person.” If that information is insufficient, Illinois law allows the consumer reporting agency to request “additional information concerning the consumer’s employment and personal or family history in order to verify his or her identity.”

DATCP Contact

Questions and comments related to this rule may be directed to:

Michelle Reinen

Department of Agriculture, Trade and Consumer Protection

P.O. Box 8911

Madison, WI 53708-8911

Telephone (608) 224-5160

E-Mail: michelle.reinen@datcp.state.wi.us

Notice of Hearings

Agriculture, Trade and Consumer Protection

[CR 07-006]

The state of Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold public hearings on proposed amendments to chapters ATCP 60, 69, 77, 80 and 82, Wis. Adm. Code, relating to safe production, processing, distribution and sale of milk and dairy products.

DATCP will hold four public hearings at the times and places shown below. DATCP invites the public to attend the hearings and comment on the proposed rule. Following the public hearings, the hearing record will remain open until Monday, March 19, 2007, for additional written comments. Comments may be sent to the Division of Food Safety at the address below, by email to debbie.mazanec@datcp.state.wi.us, or online at: <https://apps4.dhfs.state.wi.us/admrules/public/Home>.

You may obtain a free copy of this rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Food Safety, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224-4712 or emailing debbie.mazanec@datcp.state.wi.us. Copies will also be available at the hearings. To view the proposed rule online, go to: <https://apps4.dhfs.state.wi.us/admrules/public/Home>.

To provide comments or concerns relating to small business, please contact DATCP’s small business regulatory coordinator Keeley Moll at the address above, by emailing to Keeley.Moll@datcp.state.wi.us or by telephone at (608) 224-5039.

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by February 12, 2007, by writing to Deb Mazanec, Division of Food Safety, P.O. Box 8911, Madison, WI 53708-8911, telephone (608) 224-4712. Alternatively, you may contact the DATCP TDD at (608) 224-5058. Handicap access is available at the hearings.

Hearing Dates and Locations

Tuesday, February 20, 2007

10:00 a.m. to 1:00 p.m.

Appleton Public Library, Room C

225 N. Oneida Street

Appleton, WI 54911

Wednesday, February 21, 2007

10:00 a.m. to 1:00 p.m.

State of Wisconsin Office Building, Room 105

718 W. Clairemont Avenue

Eau Claire, WI 54701

Friday, February 23, 2007

10:00 a.m. to 1:00 p.m.

Green County Agriculture Building Auditorium

2841 6th Street

Monroe, WI 53566

Monday, February 26, 2007

1:00 p.m. to 4:00 p.m.

Department of Agriculture, Trade and Consumer Protection

2811 Agriculture Drive, Board Room (CR-106)

Madison, Wisconsin, 53718-6777

Analysis Prepared by the Department of Agriculture, Trade and Consumer Protection

This rule updates current rules related to safe production, processing, distribution and sale of milk and dairy products. This rule affects dairy farms, dairy plants, milk haulers, milk testing laboratories, buttermakers, cheesemakers and others. Among other things, this rule:

Brings Wisconsin rules into conformity with the Interstate Pasteurized Milk Ordinance (“PMO”). Milk and fluid milk products must be produced in compliance with the PMO, in order for Wisconsin to be able to ship those products in interstate commerce.

Updates current rules to accommodate new dairy industry technology and practices.

Clarifies current statutory prohibitions against the sale of raw milk to consumers, consistent with administrative law judge decisions.

Clarifies some rule provisions, so they will be easier to read and understand.

Statutory Authority

Statutory authority: ss. 93.07(1) and (2), 93.09 (1), 93.12 (3) and (5), 97.09 (1) and (4), 97.20 (4), 97.21 (6), 97.22 (8), 97.24 (3), and 97.52.

Statutes interpreted: ss. 93.09, 93.12, 97.02, 97.03, 97.09, 97.12, 97.17, 97.175, 97.20, 97.21, 97.22, 97.24, 97.50, 97.52, 98.145 and 98.146.

The Department of Agriculture, Trade and Consumer Protection (“DATCP”) is responsible for administering Wisconsin food safety and labeling laws, including laws related to the safety of milk and dairy products. DATCP licenses and regulates dairy farms, dairy plants, milk haulers, milk testing laboratories and analysts, bulk milk weighers and samplers, and others. DATCP has broad authority to regulate these entities, to ensure safe and wholesome dairy products and fair business practices.

Milk and fluid milk products must be produced and distributed in compliance with “Grade A” standards under the Interstate Pasteurized Milk Ordinance (“PMO”). If Wisconsin fails to comply with the PMO, Wisconsin may be precluded from shipping milk and fluid milk products in interstate commerce. Under s. 97.24, Stats., DATCP must

adopt “Grade A” rules that are in substantial accord with the PMO.

DATCP has broad authority, under s. 93.07(1), Stats., to adopt rules needed to interpret and implement laws under its jurisdiction. In addition, DATCP has the following rulemaking authority:

Under s. 93.07 (2), Stats., to prescribe forms used in connection with DATCP programs.

Under s. 93.09 (1), Stats., to adopt grading, packaging and labeling standards for food.

Under ss. 93.12 (3) and (5), Stats., to adopt rules for laboratories testing milk and dairy products.

Under s. 97.09 (1), Stats., to adopt food standards of identity, composition and quality.

Under s. 97.09 (4), Stats., to regulate the production, processing, packaging, labeling, transportation, storage, handling, display, sale, and distribution of food to protect the public from adulterated or misbranded foods.

Under s. 97.20 (4), 97.21 (6) and 97.22 (8), Stats., to regulate dairy plants, bulk milk tankers and dairy farms.

Under s. 97.24 (3), to adopt rules for the production, processing, pasteurization, distribution and testing of milk and dairy products. Rules for milk and fluid milk products must be in substantial accord with “Grade A” standards under the PMO.

Under s. 97.52, Stats., to establish sanitary standards for the production, handling and transportation, inspection and testing of milk and dairy products.

Background

The United States Food and Drug Administration (“FDA”) recently completed an audit of Wisconsin’s dairy regulatory program. FDA requested a number of changes in current DATCP rules, to make the rules more fully consistent with the current (2005) version of the PMO. This rule makes changes requested by FDA. This rule also makes other changes to update and clarify current rules, and to accommodate changing dairy industry technology, organization and practices. The changes in this rule are, for the most part, technical in nature. However, some rule changes may require significant changes by some dairy businesses (see *Business Impact Analysis* below).

DATCP and others have proposed major reforms to modernize and streamline the PMO. However, those reforms will require action at the national level and by other states. In the meantime, Wisconsin must comply with existing PMO requirements.

Rule Content

Dairy Farms

This rule updates and modifies current rules related to dairy farms. Among other things, this rule does all of the following:

- Incorporates PMO requirements related to gravity flow manure handling systems and liquid manure storage.
- Clarifies milk hauler responsibilities relating to mixing, sampling, and testing milk shipments.
- Spells out standards and procedures related to Wisconsin’s performance-based dairy farm inspection system.
- Updates drug residue action levels and safe levels, consistent with the PMO.
- Clarifies dairy plant and DATCP responsibilities relating to testing milk from dairy farms, and reporting test results.
- Spells out new requirements related to the safety of water used in milking and processing operations.

- Clarifies milk temperature monitoring and recording requirements, and requires dairy farms to keep milk temperature records for at least 6 months (extended from 90 days under current rules).

Clarifies drug residue testing procedures, including requirements confirmation of positive screening tests and rejection of milk shipments pending follow-up testing to show that drug contamination has been eliminated.

- Clarifies producer and installer responsibilities for obtaining DATCP review of dairy farm remodeling plans.
- Expands rule coverage to include all “milking animals,” not just cows, sheep and goats.
- Expands current requirements related to dairy farm and dairy plant cooling systems.
- Clarifies the current statutory prohibition related to the sale of unpasteurized “raw milk” to consumers, consistent with administrative law judge decisions. Raw milk sales have been implicated in a number of serious food-borne disease outbreaks in Wisconsin and elsewhere.
- Eliminates current requirement related to dairy plant testing for coarse sediment in milk.

Dairy Plants

This rule updates and modifies current rules related to dairy plants. Among other things, this rule does all of the following:

Strengthens water safety requirements and clarifies that DATCP, rather than the dairy plant operator, must perform certain water safety tests.

Clarifies cleaning and sanitizing requirements.

Clarifies milk testing requirements, including drug residue testing requirements. Among other things, this rule clarifies testing requirements for farms that milk directly to bulk milk tankers.

This rule eliminates coarse sediment testing requirements.

Updates and clarifies pasteurization standards, procedures and testing requirements.

Requires regular DATCP review of pasteurization records and “cleaned-in-place” equipment cleaning records.

Updates requirements related to calibration of automated milk component testing devices.

Updates dairy plant recordkeeping requirements. Dairy plants must retain certain cleaning and sanitizing records for at least 6 months. Dairy plants must keep for at least 3 years certain documents related to bulk milk shipments.

Milk Testing Laboratories

DATCP currently certifies laboratories that test milk, food or water for compliance with public health standards. This rule updates and clarifies current rules related to the certification of laboratories and lab analysts. Among other things, this rule:

Updates the list of tests for which certification is required.

Clarifies current certification and testing requirements related to drug residue testing in milk, including requirements for timely confirmation of positive screening test results.

Clarifies that test results reported by a certified laboratory are presumptively valid.

Milk Haulers and Bulk Milk Tankers

This rule updates and modifies current requirements related to milk haulers and bulk milk tankers. Among other things, this rule does all of the following:

Establishes standards for bulk milk tanker cleaning facilities at dairy plants.

Requires dairy plants to keep bulk milk tanker cleaning and sanitizing records for 15 days, rather than 90 days. When a

dairy plant operator cleans a bulk milk tanker, the operator must remove the cleaning tag from the last cleaning and keep the removed tag for at least 15 days.

Clarifies that out-of-state bulk milk tankers with grade A permits from other jurisdictions are not required to hold Wisconsin grade A permits.

Requires grade A permit numbers to be clearly displayed on bulk milk tankers.

Clarifies the responsibilities of milk haulers (bulk milk weighers and samplers) related to weighing, measuring, and sampling milk shipments.

Buttermakers and Cheesemakers

This rule clarifies current professional licensing requirements for individuals engaged as buttermakers and cheesemakers. This rule gives license applicants more options for meeting training and experience qualifications.

Standards Incorporated by Reference

Pursuant to s. 227.21, Stats., DATCP will request permission from the attorney general and revisor of statutes to incorporate the following standards by reference in this rule without reproducing the publications in full. This rule updates titles, publication dates, and supporting information for the following publications:

- “Grade A Pasteurized Milk Ordinance,” published by the Food and Drug Administration, Public Health Service, U.S. Department of Health and Human Services (2005 Revision).

- “3-A Accepted Practices for the Design, Fabrication and Installation of Milking and Milk Handling Equipment,” document #3A606-05, published by “3-A Sanitary Standards, Inc. (November 2002).

- “3-A Sanitary Standards for Farm Milk Cooling and Holding Tanks,” document #3A13-10, published by 3-A Sanitary Standards, Inc. (November 2003).

- “3-A Accepted Practices for the Sanitary Construction, Installation, Testing, and Operation of High-Temperature Short-Time and Higher-Heat Shorter-Time Pasteurizer Systems,” document #3A603-07, published by 3-A Sanitary Standards, Inc. (November 2005).

- “3-A Sanitary Standards for Stainless Steel Automotive Transportation Tanks for Bulk Delivery and Farm Pick-Up Service,” document #3A05-15, published by 3-A Sanitary Standards, Inc. (November 2002).

- “Official Methods of Analysis of AOAC International,” published by AOAC International (18th Edition, 2005).

- “Milk and Dairy Beef Residue Prevention Protocol, 2005 Producer Manual of Best Management Practices,” published by Agri-Education, Inc.

- “Standard Methods for the Examination of Dairy Products, published by the American Public Health Association (17th Edition, 2004).

- “Compendium of Methods for the Microbiological Examination of Foods, published by the American Public Health Association (4th Edition, 2001).

- “Bacteriological Analytical Manual,” published by the Food and Drug Administration, Public Health Service, United States Department of Health and Human Services (8th Edition, Revision A, 1998).

- “Manual for the Certification of Laboratories Analyzing Drinking Water,” published by the U. S. Environmental Protection Agency (5th Edition, 2005).

- “Standard Methods for the Examination of Water and Wastewater, published by the American Public Health Association, the American Water Works Association and the Water Environment Federation (20th Edition, 1998).

- “Methods of Making Sanitation Ratings of Milk Supplies,” published by the Food and Drug Administration, Public Health Service, United States Department of Health and Human Services (2005 Revision).

- FDA 2400 Series Laboratory Evaluation Forms, published by the United States Department of Health and Human Services, Public Health Service, Food and Drug Administration (forms that are effective as of the effective date of this rule).

Copies of these publications will be on file with DATCP and the revisor of statutes. Rule *notes* explain how readers may obtain copies.

Fiscal Estimate

DATCP currently regulates dairy farms, dairy plants, bulk milk weighers and samplers, bulk milk tankers, milk testing laboratories, laboratory analysts, buttermakers and cheesemakers to protect consumers and facilitate the interstate shipment of Wisconsin grade A milk and dairy products.

This rule will not have a significant fiscal impact on state government. This rule updates current rules, but does not make major changes that will increase state government costs. This rule does not change current license fees, and does not have any impact on current state revenues.

Business Impact

DATCP currently regulates dairy farms, dairy plants, bulk milk weighers and samplers, bulk milk tankers, milk testing laboratories, laboratory analysts, buttermakers and cheesemakers to protect consumers and facilitate the interstate shipment of Wisconsin grade A milk and dairy products. Current regulations have an important impact on dairy industry operations, including small business operations. Most dairy farms, and some dairy processing operations, qualify as “small businesses” under s. 227.114, Stats.

This rule makes a large number of technical changes to existing regulations. For the most part, however, this rule will not have a significant impact on affected businesses.

Some rule changes may have a significant impact on some affected businesses. For example, this rule mandates certain pasteurization and cooling requirements that may require some dairy plants to install new or remodeled equipment. DATCP estimates that no more than 5 dairy plants will be affected by this particular requirement. The actual impact will depend on variable factors related to processing operations, current equipment and plant size. This rule delays the effective date of the requirement by one year, so that affected dairy plants will have time to make the necessary changes.

This rule changes current recordkeeping requirements, but the changes should not impose a significant burden on affected businesses. This rule will not require affected businesses to obtain any new professional skills or services.

Federal Regulations

FDA administers the PMO in cooperation with the National Conference on Interstate Milk Shipments (NCIMS). NCIMS, a cooperative organization of states, develops and adopts PMO provisions subject to approval by FDA. FDA audits state compliance, and may “de-list” individual milk shippers or entire states that fail to comply. Other states may refuse to accept milk shipments from “de-listed” states or shippers.

Wisconsin rules must be consistent with the PMO, in order for Wisconsin to ship milk and fluid milk products in interstate commerce. FDA has requested changes in the Wisconsin rules, to make them consistent with the current version of the PMO. This rule updates Wisconsin rules, so they will be consistent with the PMO.

The United States Department of Agriculture (USDA) recommends standards for non-fluid dairy products (such as cheese), and for "Grade B" milk used in the manufacture of those products. USDA evaluates state programs for consistency with its recommended standards. Unlike PMO standards for "Grade A" milk and fluid milk products, the USDA "Grade B" standards are not mandatory. However, Wisconsin and surrounding state rules are consistent with those standards.

USDA and the United States Environmental Protection Agency administer other programs (such as milk marketing orders, pesticide registration and water pollution regulations) that affect the operation of dairy businesses, but the PMO is the primary federal or interstate regulation relevant to this rule. Federal regulations in 21 CFR 1240 mandate pasteurization of milk and prohibit interstate sale of unpasteurized milk and fluid milk products.

Surrounding State Programs

Illinois, Iowa, Michigan and Minnesota are all members of the NCIMS. All 4 states have dairy regulations that are in substantial compliance with the PMO. They also have regulations for "Grade B" milk and non-fluid dairy products (such as cheese) that are substantially equivalent to USDA recommended standards.

Notice of Hearing Commerce [CR 07-005]

NOTICE IS HEREBY GIVEN that pursuant to section 895.59 (2) of the Statutes, the Department of Commerce will hold a public hearing on proposed rules in chapter Comm 200 relating to small business enforcement discretion.

The public hearing will be held as follows:

Date and Time:

Wednesday, **February 14, 2007**

Commencing at 10:00 A.M.

Location:

Thompson Commerce Center, Third Floor, Room 3B

201 West Washington Avenue

Madison, Wisconsin

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing, via e-mail. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until February 20, 2007, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. All written comments should be submitted by e-mail to srockweiler@commerce.state.wi.us. If e-mail submittal is not possible, written comments may be mailed to Sam Rockweiler, Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53708-0427.

This hearing will be held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 266-8741 or (608) 264-8777 (TTY) at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon a request from a person with a disability.

Analysis

1. Statutes Interpreted. Section 895.59 of the Statutes
2. Statutory Authority. Section 895.59 (2) of the Statutes
3. Explanation of Agency Authority. Section 895.59 (2) of the Statutes directs the Department to promulgate a rule that discloses the discretion the Department may exercise in the enforcement of rules and guidelines against a small business. The rule must also specify when the Department will not allow this discretion.
4. Related Statute or Rule. None known.
5. Plain Language Analysis. The proposed rule discloses the discretion the Department may exercise in enforcement actions that are undertaken to obtain a small business's compliance with the Department's rules and guidelines. The proposed rule also specifies when such discretion is not allowed.

An informational Note is included under section Comm 200.01, for alerting readers that the Department has additional discretion – beyond what is specified in this chapter – for enforcing rules to gain compliance by any business, regardless of size. The Department exercises this additional discretion for determining such things as where or when Department staff should perform enforcement inspections.

Similarly, a subsequent informational Note under section Comm 200.10 (1) explains that the Department also has additional, specific discretion to extend a compliance deadline for any entity, regardless of size – after the decision to perform an inspection is made.

Under section Comm 200.10 (3), the Department's responsibility for exercising the discretion in this chapter will not begin until after the corresponding small business entity informs the Department that the entity meets the definition of small business under section Comm 200.03 (2), and that the violation circumstances in section Comm 200.10 (2) have not occurred.

6. Summary of, and Comparison With, Existing or Proposed Federal Regulations. The Department is not aware of any existing or proposed federal regulation that addresses the activities to be regulated by this rule.

7. Comparison With Rules in Adjacent States. The Department is not aware of any similar rule in an adjacent State.

8. Summary of Factual Data and Analytical Methodologies. The data and methodology that was used to develop the proposed rules consisted of reviewing (1) the requirements in section 895.59 of the Statutes, (2) the Department's current practices for exercising enforcement discretion, and (3) the corresponding rules that other State agencies have developed in response to section 895.59 of the Statutes.

9. Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of an Economic Impact Report. The primary document that was used to determine the effect of the proposed rules on small business was 2003 Wisconsin Act 145. This Act addressed numerous aspects of administrative rule making that relate to small business, and required the Department and other State agencies to each promulgate a rule which discloses the discretion that may be exercised when enforcing rules and guidelines against a small business. Neither the Act nor the proposed rule imposes constraints on small business. An economic impact report was not required.

10. Effect on Small Business. The proposed rule should have a positive effect on small business.

11. Agency Contact Information. Jim Quast, Wisconsin Department of Commerce, Bureau of Program Development,

P.O. Box 2689, Madison, WI, 53707-2689; telephone (608) 266-9292; e-mail jquast@commerce.state.wi.us.

12. Place Where Comments Are to Be Submitted, and Deadline for Submission. Comments on the proposed rules may be submitted by e-mail to srockweiler@commerce.state.wi.us, no later than February 20, 2007. If e-mail submittal is not possible, written comments may be mailed, by the same date, to Sam Rockweiler, Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53708-0427.

The proposed rules and an analysis of the rules are available on the Internet, by entering "Comm 200" in the search engine at the following Web site: <http://adminrules.wisconsin.gov>. Paper copies may be obtained without cost from Roberta Ward at the Department of Commerce, Bureau of Program Development, P.O. Box 2689, Madison, WI, 53701-2689; telephone (608) 266-8741; e-mail rward@commerce.state.wi.us; or (608) 264-8777 (TTY). Copies will also be available at the public hearing.

Environmental Analysis

Notice is hereby given that the Department has considered the environmental impact of the proposed rules. In accordance with chapter Comm 1, the proposed rules are a Type III action. A Type III action normally does not have the potential to cause significant environmental effects and normally does not involve unresolved conflicts in the use of available resources. The Department has reviewed these rules and finds no reason to believe that any unusual conditions exist. At this time, the Department has issued this notice to serve as a finding of no significant impact.

Fiscal Estimate

The proposed rules will not create any significant additional workload costs for the Department or its local agents, and will not result in any significant changes to the revenues collected by the Department or its local agents.

The enforcement discretion that is the subject of the proposed rules will not have a direct, substantive fiscal effect on the private sector.

Initial Regulatory Flexibility Analysis

1. Types of small businesses that will be affected by the rules.

The rules may affect any business that must comply with the administrative codes enforced by any of the Divisions within the Department.

2. Reporting, bookkeeping and other procedures required for compliance with the rules.

There are no reporting, bookkeeping or other procedures required for compliance with the rules.

3. Types of professional skills necessary for compliance with the rules.

There are no types of professional skills necessary for compliance with the rules.

4. Rules have a significant economic impact on small businesses.

No. Rules not submitted to Small Business Regulatory Review Board

The small business regulatory coordinator for the Department of Commerce is Carol Dunn, who may be contacted at telephone (608) 267-0297, or by e-mail at carol.dunn@wisconsin.gov.

Notice of Hearing

Insurance

[CR 07-001]

Notice is hereby given that pursuant to the authority granted under s. 601.41 (3), Stats., and the procedures set forth in under s. 227.18, Stats., OCI will hold a public hearing to consider the adoption of the attached proposed rulemaking order affecting section Ins 17.25 (12m) and 17.28 (6s), Wis. Adm. Code, relating to Peer Review Surcharge Rates.

Hearing Information

Date: **February 19, 2007**

Time: 9:30 a.m., or as soon thereafter as the matter may be reached

Place: OCI, Room 227, 125 South Webster St 2nd Floor, Madison, WI

Written comments can be mailed to:

Theresa Wedekind

OCI Rule Comment for Rule Ins 1725

Office of the Commissioner of Insurance

PO Box 7873

Madison WI 53707-7873

Written comments can be hand delivered to:

Theresa Wedekind

OCI Rule Comment for Rule Ins 1725

Office of the Commissioner of Insurance

125 South Webster St - 2nd Floor

Madison WI 53702

Comments can be emailed to:

Theresa Wedekind

Theresa.Wedekind@oci.state.wi.us

Comments submitted through the Wisconsin Administrative Rule website at:

<http://adminrules.wisconsin.gov> on the proposed rule will be considered.

The deadline for submitting comments is 4:00 p.m. on the 8th day after the date for the hearing stated in this Notice of Hearing.

Analysis Prepared by the Office of the Commissioner of Insurance (OCI)

1. Statutes interpreted: ss. 655.27 (3), and 619.04 (5m), Wis Stats.

2. Statutory authority: ss. 601.41 (3), 619.04 (5m) and 655.27 (3) (bg), Wis Stats.

3. Explanation of the OCI's authority to promulgate the proposed rule under these statutes: The commissioner of insurance, with the approval of the board of governors (board) of the injured patients and families compensation fund (fund) and the Wisconsin health care liability insurance plan (plan), is required to establish by administrative rule the surcharge rates which may be applied to a health care provider's annual fund fee, and provider annual premium if participating in the plan, based upon recommendations from the fund's peer review council.

4. Related Statutes or rules: None.

5. The plain language analysis and summary of the proposed rule: This rule establishes the surcharge rates which a health care provider may be required to pay to the fund or the plan. These surcharge rates are based upon the number of claims paid on behalf of a health care provider in addition to the dollar amount of those claims. Paid claim reports are

reviewed by the fund's peer review council and if deemed appropriate the council makes a recommendation to the board of governors to assess a surcharge to the health care provider for their coverage under the fund. The board approved these surcharge rates at its meeting on December 14, 2005, based on the recommendation of the board's actuarial and underwriting committee and reports of the fund's actuaries.

6. Summary of and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule: To the fund board's and OCI's knowledge there is no existing or proposed federal regulation that is intended to address patient compensation fund rates, administration or peer review activities.

7. Comparison of similar rules in adjacent states as found by OCI: To the fund board's and OCI's knowledge there are no similar rules in the adjacent states to compare this rule to as none of these states have a patients compensation fund peer review council created by statute where rates are directed to be established yearly by rule as is true in Wisconsin.

8. A summary of the factual data and analytical methodologies that OCI used in support of the proposed rule and how any related findings support the regulatory approach chosen for the proposed rule: None. This rule establishes peer review surcharge rates pursuant to the requirements of the above-noted Wisconsin statutes.

9. Any analysis and supporting documentation that OCI used in support of OCI's determination of the rule's effect on small businesses under s. 227.114: The effect to small business would be minimal. The surcharge is applied only to individual health care providers. The only effect to small business would be if a surcharge was imposed upon a health care provider who was employed by a small business which paid medical malpractice insurance premium on the provider's behalf.

10. If these changes may have a significant fiscal effect on the private sector, the anticipated costs that will be incurred by private sector in complying with the rule: The effect to small business would be minimal as stated in number 9 above.

11. A description of the Effect on Small Business: This rule will have very little effect on small businesses.

12. Agency contact person: A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the WEB sites at: <http://oci.wi.gov/ocirules.htm> or by contacting Inger Williams, OCI Services Section, at:

Phone: (608) 264-8110

Email: Inger.Williams@OCI.State.WI.US

Address: 125 South Webster St – 2nd Floor Madison WI 53702

Mail: PO Box 7873, Madison WI 53707-787313.

Place where comments are to be submitted and deadline for submission: The deadline for submitting comments is 4:30 p.m. on February 27, 2006.

Mailing address:

Theresa Wedekind

OCI Rule Comment for Rule Ins 17287 PCF fee rule

Office of the Commissioner of Insurance

PO Box 7873

Madison WI 53707-7873

Street address:

Theresa Wedekind

OCI Rule Comment for Rule Ins 17287 PCF fee rule

Office of the Commissioner of Insurance
125 South Webster St – 2nd Floor
Madison WI 53702

WEB Site: <http://oci.wi.gov/ocirules.htm>

Private Sector Fiscal Analysis

Rule Ins 17.25 (12m) and 17.28 (6s) peer review surcharge rates relating to annual injured patients and families compensation fund fees and Wisconsin health care liability insurance plan premium rates.

The changes in the surcharge rates promulgated by this rule do not result in a significant fiscal effect on the private sector.

The cost of fund coverage is a very small portion of the expenses incurred by health care providers. The plan insures a relatively small number of health care provider, approximately 300, and therefore the potential for any significant impact is very minimal.

These surcharge rates have not been revised since the implementation of the peer review surcharge in 1980. Although a health care provider may pass any increase resulting from a surcharge on to its patients, there will not be a significant fiscal effect on the private sector as a result of this proposed rule.

Fiscal Estimate

The Injured Patients and Families Compensation Fund (IPFCF or Fund) is a segregated fund. Annual Fund fees are established to become effective each July 1 based on actuarial estimates of the Fund's needs for payment of medical malpractice claims. Health care providers may have a surcharge levied on their fund fees based upon claims experience, pursuant to a recommendation by the Fund's Peer Review Council. The proposed revisions to the surcharge tables were approved by the Fund's Board of Governors at its December 14, 2005 meeting.

The Fund is a unique fund; there are no other funds like it in the country. The WI Fund provides unlimited liability coverage and participation is mandatory. These two features make this Fund unique compared to funds in other states. The only persons who will be affected by this rule change are the Fund participants themselves as the IPFCF is fully funded through assessments paid by Fund participants.

The Wisconsin Health Care Liability Insurance Plan was created by statute and is a licensed insurance company. The insurance operations are funded by premiums paid by insured health care providers.

There is no effect on GPR.

Initial Regulatory Flexibility Analysis

Notice is hereby further given that pursuant to s. 227.114, Stats., the proposed rule may have an effect on small businesses. The initial regulatory flexibility analysis is as follows:

a. Types of small businesses affected: Insurance agents, LSHO, Town Mutuals, Small Insurers, etc.

b. Description of reporting and bookkeeping procedures required: None beyond those currently required.

c. Description of professional skills required: None beyond those currently required.

OCI Small Business Regulatory Coordinator

The OCI small business coordinator is Eileen Mallow and may be reached at phone number (608) 266- 7843 or at email address Eileen.Mallow@oci.state.wi.us

Contact Person

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the OCI

internet WEB site at
<http://oci.wi.gov/ocirules.htm>

or by contacting

Inger Williams, Services Section, OCI

at: Inger.Williams@OCI.State.WI.US

(608) 264-8110

125 South Webster Street – 2nd Floor

Madison WI

or PO Box 7873, Madison WI 53707-7873.

Notice of Hearing Insurance [CR 07-002]

Notice is hereby given that pursuant to the authority granted under s. 601.41 (3), Stats., and the procedures set forth in under s. 227.18, Stats., OCI will hold a public hearing to consider the adoption of the attached proposed rulemaking order affecting section Ins 17.01 (3) and 17.28 (6), Wis. Adm. Code, relating to Fiscal year 2008 Fund fees.

Hearing Information

Date: **February 19, 2007**

Time: 10:30 a.m., or as soon thereafter as the matter may be reached

Place: OCI, Room 227, 125 South Webster St 2nd Floor, Madison, WI

Written comments can be mailed to:

Theresa Wedekind

OCI Rule Comment for Rule Ins 1728

Office of the Commissioner of Insurance

PO Box 7873

Madison WI 53707-7873

Written comments can be hand delivered to:

Theresa Wedekind

OCI Rule Comment for Rule Ins 1728

Office of the Commissioner of Insurance

125 South Webster St – 2nd Floor

Madison WI 53702

Comments can be emailed to:

Theresa Wedekind

Theresa.Wedekind@oci.state.wi.us

Comments submitted through the Wisconsin Administrative Rule website at:
<http://adminrules.wisconsin.gov> on the proposed rule will be considered.

The deadline for submitting comments is 4:00 p.m. on the 8th day after the date for the hearing stated in this Notice of Hearing.

Analysis Prepared by the Office of the Commissioner of Insurance (OCI)

1. Statutes interpreted: ss. 655.27 (3), and 655.61, Wis Stats.

2. Statutory authority: ss. 601.41 (3), 655.004, 655.27 (3) (b), and 655.61, Wis Stats.

3. Explanation of the OCI's authority to promulgate the proposed rule under these statutes:

The commissioner of insurance, with the approval of the board of governors (board) of the injured patients and families

compensation fund (fund), is required to establish by administrative rule the annual fees which participating health care providers must pay to the fund and the annual fee due for the operation of the medical mediation panel.

4. Related Statutes or rules:

None.

5. The plain language analysis and summary of the proposed rule:

This rule establishes the fees which participating health care providers must pay to the fund for the fiscal year beginning July 1, 2007. These fees represent a 5 % increase compared with fees paid for the 2006-07 fiscal year. The board approved these fees at its meeting on December 20, 2006, based on the recommendation of the board's actuarial and underwriting committee and reports of the fund's actuaries.

The board is also required to promulgate by rule the annual fees for the operation of the injured patients and families compensation mediation system, based on the recommendation of the director of state courts. The recommendation of the director of state courts was reviewed by the board's actuarial and underwriting committee which recommended to the board an amount slightly less than what was requested based in part upon the ending balance in the mediation system projected financials. This rule implements the funding level approved by the board by establishing mediation panel fees for the next fiscal year at \$17.00 for physicians and \$1.00 per occupied bed for hospitals, representing a decrease of \$8.00 per physician and \$1.00 per occupied bed for hospitals from 2006-07 fiscal year mediation panel fees.

6. Summary of and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

To the fund board's and OCI's knowledge there is no existing or proposed federal regulation that is intended to address patient compensation fund rates, administration or activities.

7. Comparison of similar rules in adjacent states as found by OCI:

To the fund board's and OCI's knowledge there are no similar rules in the adjacent states to compare this rule to as none of these states have a patients compensation fund created by statute where rates are directed to be established yearly by rule as is true in Wisconsin.

8. A summary of the factual data and analytical methodologies that OCI used in support of the proposed rule and how any related findings support the regulatory approach chosen for the proposed rule:

None. This rule establishes annual fund fees pursuant to the requirements of the above-noted Wisconsin statutes.

9. Any analysis and supporting documentation that OCI used in support of OCI's determination of the rule's effect on small businesses under s. 227.114:

This increase in fund fees will have an effect on some small businesses in Wisconsin. However, the vast majority of fund participants that meet the definition of a small business are single shareholder corporations owned by a physician. These entities do not pay an additional fee separate from the fund fee physicians pay for their individual fund coverage and, therefore, will not be affected by the proposed rule. The fund identified a few small businesses which meet the definition of small business and that may pay an additional fee separate from the physician fee. These small businesses include some small multi-shareholder corporations that pay an additional fee to the fund based upon the number of shareholder physicians and employed physicians. However, even for

these few entities, although there is an effect it is not significant nor should it negatively effect the small business's ability to compete with other providers not subject to potential additional fee.

10. If these changes may have a significant fiscal effect on the private sector, the anticipated costs that will be incurred by private sector in complying with the rule:

The increase in fees promulgated by this rule does not result in a significant fiscal effect on the private sector. The cost of fund coverage is a very small portion of the expenses incurred by health care providers. Fund fees prior to this increase are 26% less then they were 5 years ago and after this increase will still be 23% less then 5 years ago. Although a health care provider may pass this increase on to its patients, there will not be a significant fiscal effect on the private sector as a result of this proposed rule.

11. A description of the Effect on Small Business:

This rule will have little or no effect on small businesses. The increase contained in the proposed rule will require providers to pay an increased assessment which will increase the operational expenses for the providers. However, as stated in response to #10, above, while this proposed rule increases fund fees, the fees that will be assessed are still 26% lower than fees paid 5 years ago and the fee is proportional to all size businesses. As such, small businesses will not be disproportionately affected and the proposed rule will have no effect on the provider's competitive abilities.

12. Agency contact person:

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the WEB sites at: <http://oci.wi.gov/ocirules.htm>

or by contacting Inger Williams, OCI Services Section, at:
Phone: (608) 264-8110

Email: Inger.Williams@OCI.State.WI.US

Address: 125 South Webster St – 2nd Floor Madison WI 53702

Mail: PO Box 7873, Madison WI 53707-7873

13. Place where comments are to be submitted and deadline for submission:

The deadline for submitting comments is 4:30p.m. on February 27, 2006.

Mailing address:

Theresa Wedekind

OCI Rule Comment for Rule Ins 17288 PCF fee rule

Office of the Commissioner of Insurance

PO Box 7873

Madison WI 53707-7873

Street address:

Theresa Wedekind

OCI Rule Comment for Rule Ins 17288 PCF fee rule

Office of the Commissioner of Insurance

125 South Webster St – 2nd Floor

Madison WI 53702

WEB Site: <http://oci.wi.gov/ocirules.htm>

Private Sector Fiscal Analysis

Rule Ins 17.25 (12m) and 17.28 (6s) peer review surcharge rates relating to annual injured patients and families compensation fund fees and Wisconsin health care liability insurance plan premium rates.

The changes in the surcharge rates promulgated by this rule do not result in a significant fiscal effect on the private sector.

The cost of fund coverage is a very small portion of the expenses incurred by health care providers. The plan insures a relatively small number of health care provider, approximately 300, and therefore the potential for any significant impact is very minimal.

These surcharge rates have not been revised since the implementation of the peer review surcharge in 1980. Although a health care provider may pass any increase resulting from a surcharge on to its patients, there will not be a significant fiscal effect on the private sector as a result of this proposed rule.

Fiscal Estimate

The Injured Patients and Families Compensation Fund (IPFCF or Fund) is a segregated fund. Annual Fund fees are established to become effective each July 1 based on actuarial estimates of the Fund's needs for payment of medical malpractice claims. Health care providers may have a surcharge levied on their fund fees based upon claims experience, pursuant to a recommendation by the Fund's Peer Review Council. The proposed revisions to the surcharge tables were approved by the Fund's Board of Governors at its December 14, 2005 meeting.

The Fund is a unique fund; there are no other funds like it in the country. The WI Fund provides unlimited liability coverage and participation is mandatory. These two features make this Fund unique compared to funds in other states. The only persons who will be affected by this rule change are the Fund participants themselves as the IPFCF is fully funded through assessments paid by Fund participants.

The Wisconsin Health Care Liability Insurance Plan was created by statute and is a licensed insurance company. The insurance operations are funded by premiums paid by insured health care providers.

There is no effect on GPR.

Initial Regulatory Flexibility Analysis

Notice is hereby further given that pursuant to s. 227.114, Stats., the proposed rule may have an effect on small businesses. The initial regulatory flexibility analysis is as follows:

a. Types of small businesses affected: Insurance agents, LSHO, Town Mutuals, Small Insurers, etc.

b. Description of reporting and bookkeeping procedures required: None beyond those currently required.

c. Description of professional skills required: None beyond those currently required.

OCI Small Business Regulatory Coordinator

The OCI small business coordinator is Eileen Mallow and may be reached at phone number (608) 266- 7843 or at email address Eileen.Mallow@oci.state.wi.us

Contact Person

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the OCI internet WEB site at <http://oci.wi.gov/ocirules.htm> or by contacting Inger Williams, Services Section, OCI, at: Inger.Williams@OCI.State.WI.US, (608) 264-8110, 125 South Webster Street – 2nd Floor, Madison WI or PO Box 7873, Madison WI 53707-7873.

Notice of Hearing Regulation and Licensing

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Department of Regulation and Licensing in s. 227.11 (2), Stats., and subchapter VII of ch. 440, Stats., as created by 2005 Wisconsin Act 25, renumbered by 2005

Wisconsin Act 254, and amended by 2005 Wisconsin Act 407, and interpreting s. 440.88, Stats., the Department of Regulation and Licensing will hold a public hearing at the time and place indicated below to consider an order adopting emergency rules to create chs. RL 164, 161, 162, 163, 166, 167 and 168, relating to substance abuse professionals.

Hearing Date, Time and Location

Date: February 13, 2007
Time: 9:15 A.M.
Location: 1400 East Washington Avenue
 (Enter at 55 North Dickinson Street)
 Room 121A
 Madison, Wisconsin

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Legal Counsel, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by February 16, 2007, to be included in the record of rule-making proceedings.

Analysis prepared by the Department of Regulation and Licensing

Statutes interpreted: Section 440.88, Stats.

Statutory authority: Section 227.11 (2), Stats., and Subchapter VII of ch. 440, Stats., as created by 2005 Wisconsin Act 25, renumbered by 2005 Wisconsin Act 254, and amended by 2005 Wisconsin Act 407.

Explanation of agency authority: Subchapter VII of ch 440, Stats., was enacted on July 25, 2005. It was amended by Act 407 which was enacted on May 10, 2006. Under subch. VII of ch. 440, Stats., the Department of Regulation and Licensing is required to promulgate rules relating to the issuance and renewal of credentials, requirements for certification, supervised practice, scope of practice, education approval, grounds for discipline and professional liability insurance.

Related statute or rule: Wisconsin Administrative Code s. MPSW 1.09 which relates to certification of social workers, professional counselors and marriage and family therapists to treat substance use disorder patients as a specialty.

Wisconsin Administrative Code ch. HFS 75 which relates to the certification of substance use disorder treatment clinics and programs.

Plain language analysis: 2005 Wisconsin Act 25 created Subchapter VII of chapter 440, Stats., Substance Abuse Counselors, Clinical Supervisors, and Prevention Specialists. This Act transferred the certification and regulation of Alcohol and Other Drug Abuse (AODA) counselors from the Department of Health and Family Services to the Department of Regulation and Licensing, effective 2006. This proposed rule-making order creates rules relating to definitions, requirements for certification, supervised practice, scope of practice, education approval, and professional liability insurance for substance abuse professionals.

Clearinghouse Rule 06-060 relates to a code of conduct and renewal requirements for substance abuse professionals. That rule-making was done separate to this rule-making, and there is also an Emergency Rule relating to a code of conduct and renewal requirements.

Chapter RL 160 is being created to include definitions of terms that are used in subch. VII of ch. 440, Stats., and in chs. RL 160 to 167. The proposed rules include definitions for "accredited," "assessment," "CEH," "clinical substance abuse counselor," "clinical supervision," "clinical supervisor," "clinical supervisor-in-training," "comprehensive program," "core functions," "credential," "department," "DSM," "hour," "independent clinical supervisor," "intermediate clinical supervisor," "patient," "practice dimensions," "prevention," "prevention domains," "prevention specialist," "prevention specialist-in-training," "substance," "substance abuse counselor," "substance abuse counselor-in-training," "substance use disorder" and "transdisciplinary foundations."

Chapter RL 161 is being created to identify the requirements and procedures for submitting applications for licenses.

Chapter RL 162 is being created to identify the restrictions and minimum requirements for supervision of counselors by clinical supervisors.

Chapter 163 is being created to identify the scope and restrictions on the practice of the credential holders.

Chapter RL 166 is being created to identify the approval process and educational requirements for educational coursework and continuing education opportunities.

Chapter RL 167 is being relating to professional liability insurance.

Chapter RL 168 is being created to identify the requirements for continuing education.

Summary of, and comparison with, existing or proposed federal regulation:

There is no existing or proposed federal regulation that is intended to address the activities to be regulated by this rule.

Summary of factual data and analytical methodologies:

The professions had previously been regulated by the Department of Health and Family Services who delegated that function to the Wisconsin Certification Board. The Legislative Audit Bureau performed a limited review of the Wisconsin Certification Board and issued a report on May 11, 2005.

The rules proposed represent a re-codification of existing standards for certification developed by the Wisconsin Certification Board. The legislature, under 2005 Wisconsin Act 25 and later amended by 2005 Wisconsin Act 407, set the statutory requirements for the new levels of licensure and mandated that the Department of Regulation and Licensing draft language for certification and regulation of substance abuse professionals.

To assist in promulgation of the rules, the department has held monthly meetings with the Substance Abuse Counselors Advisory Committee for recommendations and development of the draft rules.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report: The Department of Regulation and Licensing, based upon the advice of the advisory committee is proposing changes to the existing standards of certification and regulation of substance abuse professionals. The department, to minimize impact on the profession, and preserve the experiential pathway into the profession, has attempted to minimize drastic changes, and make changes only where the advice of the committee and the protection of the public are preserved.

These rules will affect the existing 2,495 active certificate holders (from active database count provided to the department by the Wisconsin Certification Board, July, 2006)

who may transfer to the department as of December 15, 2006. The certificate holders may operate at state departmental locations (e.g. Department of Corrections) as well as state certified AODA treatment clinics under ch. HFS 75. An unknown number of certificate holders are likely to be operating in public, not-for-profit private treatment centers and for-profit treatment centers.

There are significant “grandparenting” provisions within the statutes that will ensure that existing (active and renewal) certificate holders will not lose their certification upon transfer if they do not meet the requirements for the new certificate (e.g. higher educational requirements). The grandparenting provisions do not apply for new applicants after December 15, 2006. Additionally, the department has instituted 12 month grace periods for supervision of substance abuse counselors which would allow clinics one year’s time for the supervisors to attain appropriate credentials required for supervision in their clinics.

The department is proposing changes as follows:

Educational Standards:

The proposed rules require a minimum of an associate’s degree in a behavior science to qualify for the clinical level counselor, and by requirement, qualification for supervisory certification. This is an increase in educational requirements; however, an underlying degree is often a standard for professional requirements. This may prevent existing non-clinical substance abuse counselors from accessing higher levels of credentials until they achieve the underlying degree; however, the advisory committee has recommended that for protection of the public, a minimum of an associate’s degree in a related behavioral science should be instituted.

The proposed rules reduce the required level of continuing education from 48 hours in the biennium to 40 for both substance abuse counselors and clinical substance abuse counselors. This is a reduction for applicable credential holders.

The proposed rules eliminate the existing system of pre-certification education and training from multiple and separate sources, including Wisconsin Certification Board accredited programs, endorsed trainings, seminars and home study, and require that the core training for the effective treatment of substance abuse and substance use disorder treatment be obtained from comprehensive and cohesive programs. The seminar, training and home study providers will still have access to the certificate holders through offering of continuing education programs required for recertification.

Practice Restrictions. The proposed rules contain scope of practice and restrictions which include:

Restrictions on the practice of substance abuse counselors-in-training: This credential does not assure competency; therefore, a clinical supervisor will be required to authorize the in-training counselor to provide functions when adequately trained.

The supervision of in-training counselors may not be done by clinical supervisors-in-training.

Clinical supervisors will be legally and ethically responsible for the practice of their supervisees, shall have the authority and responsibility to provide emergency consultation, interrupt/stop unsafe practice and to terminate the supervised relationship if necessary.

New definitions of who may provide supervision or qualify as a clinical supervisor: Supervision may only be provided by those with exemptions under the statutes (psychologists, psychiatrists, clinical substance abuse supervisors, or ch. 457, Stats., credential holders who have

obtained a clinical supervision certification via their specialty AODA certification under s. MPSW 1.09).

These changes may affect small business; however, where standards were increased, the department is proposing grace periods for these requirements. Additionally, these changes were seen as necessary to achieve the minimal competency required for safe practice and protection of the public.

Section 227.137, Stats., requires an “agency” to prepare an economic impact report before submitting the proposed rule-making order to the Wisconsin Legislative Council. The Department of Regulation and Licensing is not included as an “agency” in this section.

Anticipated costs incurred by private sector:

The department finds that this rule has no significant fiscal effect on the private sector.

Fiscal Estimate

The Department estimates that this rule will require staff time in the Divisions of Management Services, Professional Credentialing, Office of Legal Counsel and Office of Examinations. The one-time salary and fringe costs in the Divisions of Professional Credentialing, Office of Legal Counsel and Office of Examinations are estimated at \$22,900. The on-going salary, fringe, supplies and services costs in the Divisions of Professional Credentialing, Division of Board Services and the Office of Examinations are estimated at \$77,300.

Effect on small business: These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department’s Regulatory Review Coordinator may be contacted by email at larry.martin@drl.state.wi.us, or by calling (608) 266-8608.

Agency Contact

Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708-8935. Telephone: (608) 266-0495. Email: pamela.haack@drl.state.wi.us.

Place where comments are to be submitted:

Comments may be submitted to Pamela Haack, Paralegal, Department of Regulation and Licensing, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708-8935, or by email at pamela.haack@drl.state.wi.us.

Notice of Hearing **Workforce Development** **(Public Works Construction)** **[CR 07-003]**

NOTICE IS HEREBY GIVEN that pursuant to ss. 66.0903 (5) and 103.49 (3g), Stats., the Department of Workforce Development proposes to hold a public hearing to consider the amendment of s. DWD 290.155 (1), relating to the adjustment of thresholds for application of prevailing wage rates.

Hearing Information

Monday, **February 19, 2007** at 1:30 p.m.

G.E.F. 1 building, B103

201 E. Washington Avenue

Madison

Interested persons are invited to appear at the hearings and will be afforded the opportunity to make an oral presentation of their positions. Persons making oral presentations are

requested to submit their facts, views, and suggested rewording in writing.

Visitors to the GEF 1 building are requested to enter through the left East Washington Avenue door and register with the customer service desk. The entrance is accessible via a ramp from the corner of Webster Street and East Washington Avenue. If you have special needs or circumstances regarding communication or accessibility at the hearing, please call (608) 267-9403 at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audiotape format will be made available on request to the fullest extent possible.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 66.0903 (5), 103.49 (3g), and 227.11, Stats.

Statutes interpreted: Sections 66.0903 (5) and 103.49 (3g), Stats.

Explanation of agency authority. The prevailing wage laws require that when a state agency or local governmental unit contracts for the erection, construction, remodeling, repairing, or demolition of a public works project it must obtain a prevailing wage rate determination from the Department of Workforce Development and require that the contractors and subcontractors on the project pay their employees in accordance with those wage rates. Sections 66.0903 (5) and 103.49 (3g), Stats., set initial estimated project cost thresholds for application of the prevailing wage rate requirements and direct the Department to adjust the thresholds each year in proportion to any change in construction costs since the thresholds were last determined. Pursuant to s. DWD 290.15, the Department adjusts the thresholds based on changes in the construction cost index published in the *Engineering News-Record*, a national construction trade publication.

Summary of the proposed rule. Section DWD 290.155 (1) currently provides that the prevailing wage rate requirements do not apply to any single-trade public works project for which the estimated cost of completion is below \$43,000 and do not apply to any multi-trade public works project for which the estimated cost of completion is below \$209,000. This rule adjusts the thresholds from \$43,000 to \$44,000 for a single-trade project and from \$209,000 to \$216,000 for a multi-trade project based on a 3.452% increase in the construction cost index between December 2005 and December 2006.

Summary of related federal law. The federal prevailing wage law applies to a federal public works project for which the contract is greater than \$2,000. This threshold is in statute and is rarely adjusted.

Comparison with laws in adjacent states. Minnesota has a statutory threshold of \$2,500 for a single-trade project and \$25,000 for a multi-trade project. Illinois does not have a threshold in its prevailing wage law. The law covers public works projects and defines public works projects as projects financed under various other specified laws. Michigan does not have a threshold in its prevailing wage law. The law covers projects that must be bid and relies on other agencies to determine the thresholds for what projects must be bid. Iowa does not have a prevailing wage law.

Summary of factual data and analytical methodologies. The thresholds are increased based on the national inflation rate in the construction industry. The Department uses the construction cost index in the *Engineering News-Record*, a national construction trade publication, to determine the inflation rate.

Effect on small business. The proposed rule does not affect small businesses. The department's small business regulatory coordinator is Jennifer Jirschele, (608) 266-1023, jennifer.jirschele@dwd.state.wi.us.

Fiscal Impact

Under the proposed and emergency rules, a state agency or local governmental unit contracting for the construction of a single-trade public works project that costs more than \$43,000 but less than \$44,000 or a multi-trade project that costs more than \$209,000 but less than \$216,000 will not be covered by the prevailing wage requirement.

Contact Information

The proposed rules are available at the web site <http://adminrules.wisconsin.gov> by typing "prevailing wage" in the search engine. This site allows you to view documents associated with this rule's promulgation, register to receive email notification whenever the Department posts new information about this rulemaking order, and submit comments and view comments by others during the public comment period. You may receive a paper copy of the rule by contacting:

Elaine Pridgen
Office of Legal Counsel
Dept. of Workforce Development
P.O. Box 7946
Madison, WI 53707-7946
(608) 267-9403
elaine.pridgen@dwd.state.wi.us

Written comments. Written comments on the proposed rules received at the above address, email, or through the <http://adminrules.wisconsin.gov> web site no later than February 19, 2007, will be given the same consideration as testimony presented at the hearing.

Submittal of proposed rules to the legislature

Please check the Bulletin of Proceedings – Administrative Rules for further information on a particular rule.

Agriculture, Trade and Consumer Protection

(CR 06–085)

Ch. ATCP 156, relating to seed potato certification and grading.

Financial Institutions – Banking

(CR 06–122)

Ch. DFI–Bkg 5, relating to UCC search requests.

Financial Institutions – Banking

(CR 06–123)

Ch. DFI–Bkg 80, relating to non–judicial enforcement and surrender of collateral.

Financial Institutions – Banking

(CR 06–124)

Ch. DFI–Bkg 77, relating to pawnbrokers.

Insurance

(CR 06–118)

Ch. Ins 9, relating to preferred provider plan applicability dates and affecting small business.

Medical Examining Board

(CR 06–114)

Ch. Med 1, relating to the requirements for completion of the 3–step sequence of the United States medical Licensing Examination (USMLE).

Natural Resources

(CR 06–023)

Chs. NR 127, 160 and 166, relating to safe drinking water loan program.

Natural Resources

(CR 06–025)

Ch. NR 520, relating to balances in the waste management program revenue account.

Natural Resources

(CR 06–037)

Chs. NR 10 and 45, relating to correcting management unit boundaries, clarifying trapping requirements, correcting cross–references and update rules on the identification of tree stands on state lands.

Natural Resources

(CR 06–039)

Ch. NR 5, relating to sound testing methods for airboats.

Natural Resources

(CR 06–079)

Chs. NR 406 and 410, relating to construction permit waivers and affecting small business.

Natural Resources

(CR 06–097)

Ch. NR 1, relating to definition of “generally accepted forestry management practices”.

Natural Resources

(CR 06–102)

Chs. NR 660, etc., relating to hazardous waste management.

Podiatrists Affiliated Credentialing Board

(CR 06–056)

Chs. Pod 1 and 3, relating to waiver of continuing podiatric medical education.

Transportation

(CR 06–128)

Ch. Trans 102, relating to proof of identity.

University of Wisconsin System

(CR 06–078)

Chs. UWS 2, 4, 7, and 11, relating to procedures for dismissal of academic staff in special cases.

Rules published with this register and final regulatory flexibility analyses

*The following administrative rule orders have been adopted and published in the **January 31, 2007**, Wisconsin Administrative Register. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code and also to the subscribers of the specific affected Code.*

For subscription information, contact Document Sales at (608) 266-3358.

Natural Resources (CR 06-038)

An order affecting ch. NR 320, relating to the regulation of bridges and culverts in or over navigable waterways. Effective 2-1-07.

Summary of Final Regulatory Flexibility Analysis

Any person or small business conducting an activity in navigable waters can qualify for an exemption or apply for a general permit or individual permit. To obtain a permit, small businesses follow the same requirements as other waterfront property owners: complete an application form and submit information to describe their project and demonstrate that it complies with statutory and code requirements to receive a

certification. Schedules, application steps and compliance/reporting requirements are very basic for all applicants and most projects can be planned and conducted by individuals with no specific professional background. the proposed rules will not have a significant economic impact on a substantial number of small businesses.

Summary of Comments by Legislative Review Committees

The proposed rules were reviewed by the Senate Committee on Natural Resources and Transportation and the Assembly Committee on Natural Resources. On October 18, 2006, the Assembly Committee on Natural Resources held a public hearing. The Department did not receive any comments from the Committee regarding the proposed rule.

Sections affected by rule revisions and corrections

The following administrative rule revisions and corrections have taken place in **January 2007**, and will be effective as indicated in the history note for each particular section. For additional information, contact the Revisor of Statutes Bureau at (608) 266-7275.

Revisions

Ch. NR 320

S. NR 320.03 (17)

S. NR 320.04 (4) and (5)

S. NR 320.06 (2) (b) to (e), (g) and (h)

Errata

Items reprinted to correct printing errors such as dropped copy (or other errors) are indicated in the following listing:

Natural Resources**Ch. NR 140**

S. NR 140.10 Table 1

Marriage & Family Therapy, Counseling & Social Work**Ch. MPSW 3**

S. MPSW 3.09

Sections affected by revisor's corrections not published

Revisor's corrections under s. 13.93 (2m) (b), Stats., identified in this Wis. Adm. Register.

Subscriber's note: Please make corrections (manually) in your printed code. The affected sections are shown as corrected on the Revisor of Statutes Internet site, [Http://www.legis.state.wi.us/rsb/](http://www.legis.state.wi.us/rsb/), and on the WisLaw® CD-ROM. Printed code will be shown as corrected in its next printing.

Location of invalid cross-reference	Invalid cross-reference	Correction
Comm 5.327 (4)	chs. Comm 21 and 27	ch. Comm 21
Trans 105.02 (1)	343.63 (4), Stats.	343.62 (4) (a), Stats.
Trans 105.11 (4) (d) 2.	343.61 (4) (d), Stats.	343.61 (4) (b), Stats.
DWD 129.01 (2) (b) 3.	895.20, Stats.	995.20, Stats.

Executive orders

The following are recent Executive Orders issued by the Governor.

Executive Order 177. Relating to a proclamation that the flag of the United States and the flag of the State of Wisconsin be flown at half-staff as a mark of respect for the Late Gerald Ford, former President of the United States.

Executive Order 178. Relating to a proclamation that the flag of the United States and the flag of the State of Wisconsin be flown at half-staff as a mark of respect for Captain Kevin Kryst of the United States Marines who lost his life during Operation Iraqi Freedom.

Executive Order 179. Relating to a proclamation that the flag of the United States and the flag of the State of Wisconsin be flown at half-staff as a mark of respect for Corporal Joshua Schmitz of the United States Marine Corps who lost his life during Operation Iraqi Freedom.

Executive Order 180. Relating to a proclamation that the flag of the United States and the flag of the State of Wisconsin be flown at half-staff as a mark of respect for Private Evan Bixler of the United States Army who lost his life during Operation Iraqi Freedom.

Executive Order 181. Relating to a special session of the legislature.

The State of Wisconsin
Department of Administration
Bureau of Document Services
Document Sales and Distribution Section
P.O. Box 7840
Madison, Wisconsin 53707-7840

First Class

U.S. POSTAGE PAID

Madison, Wisconsin

Permit Number 1369

First Class Mail

Dated Material. Please Do Not Delay!